UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/2000/57
15 December 1999

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-sixth session
Item 11 (a) of the provisional agenda

# CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF TORTURE AND DETENTION

## Human rights and forensic science

Report of the Office of the United Nations High Commissioner for Human Rights submitted in accordance with Commission on Human Rights resolution 1998/36

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GE.99-16340 (E)

## Introduction

1. In its resolution 1998/36, the Commission on Human Rights requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to consult with Governments, relevant United Nations bodies and professional organizations of forensic and related experts with a view to updating the list of forensic and related experts with their biographical data, including professional qualifications, current employment, contact address, gender, indications of availability and the kind of assistance they could provide.

2. In the same resolution, the Commission also invited OHCHR and the Crime Prevention and Criminal Justice Division of the Secretariat to consider revising the Manual on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions.

3. The Commission requested OHCHR to report to it at its forty-sixth session on progress made in the use of forensic experts, including a revised standardized service agreement regulating their use. The present report is submitted in response to this request.

## I. UPDATING THE LIST OF FORENSIC EXPERTS

4. On 14 October 1998 a note verbale was sent to all Governments accredited to the United Nations Office at Geneva and a letter to relevant intergovernmental and non-governmental organizations (NGOs). As at 26 November 1999, replies had been received from 13 Governments (Argentina, Chile, Croatia, Denmark, Ghana, Iran (Islamic Republic of), Kyrgyzstan, Lithuania, Mauritius, New Zealand, Poland, the Russian Federation and Spain). The information contained in the replies related solely to lists of forensic experts. In recommending experts for inclusion in the list, Governments did not make any comments regarding their appreciation of the competence of the experts or on the possible scope of their activities. No reply was received from an intergovernmental or a non-governmental organization.

5. A consolidated list of experts will be established on the basis of all the information received to date.

## II. REVISION OF THE MANUAL

6. No comments or suggestions concerning the possibility of revising the Manual or concerning the Principles on the effective prevention and investigation of extralegal, arbitrary and summary executions, adopted by the Economic and Social Council by its resolution 1989/65, were received by OHCHR. Existing relevant legal material has been made available to those human rights bodies requesting them in the fulfilment of their mandates.

## III. USE OF FORENSIC EXPERTS

7. The growing number of national conflicts generating gross and massive human rights violations has provided more impetus to the need to resort to forensic and related experts to identify the victims. The magnitude of violence in Kosovo and East Timor, for example, call for more attention from the international community in this respect.

8 A number of special rapporteurs continued to use or refer to the need for the assistance of specialists in various forensic disciplines in the context of the implementation of their mandates.

9 In her last report to the Commission (E/CN 4/1999/103 and Add 1), the Special Rapporteur on the situation of human rights in Somalia, Ms. Mona Rishmawi, noted, inter alia, that rape and other sexual violence, which had been uncommon in Somalia before the war, had become a weapon of war for the militia and bandits, as well as in camps for displaced persons and returnees. Clan identity often led to measures resembling ethnic cleansing. Intentional attacks against the civilian population and civilian objects had become common practices. Allegations of the existence of mass graves, notably, in Hargeisa, led a team of forensic experts to examine the sites. The mission was carried out by Physicians for Human Rights (PHR) under the auspices of OHCHR in accordance with Commission on Human Rights resolution 1997/47. The evidence forensic evidence compiled provides the foundation for any future pursuit of legal accountability for identified crimes.

10 Forensic expertise was also required in the investigation of alleged violations of human rights as reflected in the following:

(a) Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Ms. Asma Jahangir (E/CN 4/1999/39 and Add 1);

(b) Report of the Special Rapporteur on the question of torture, Sir Nigel Rodley (E/CN 4/1999/61);

(c) Report of the Working Group on Enforced or Involuntary Disappearances (E/CN 4/1999/62);

(d) Report of the Working Group on Arbitrary Detention (E/CN 4/1999/63).

11 Special concern was expressed by the Commission about the human rights situation in East Timor, inviting missions and subsequently reports by the Secretary-General (E/CN 4/1999/28), the Working Group on Arbitrary Detention, the Special Rapporteur on violence against women (E/CN 4/1999/68/Add 1 and Add 3), the Special Rapporteur on the question of torture (E/CN 4/1999/61) , the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Working Group on Enforced or Involuntary Disappearances.

## IV. STANDARDIZED SERVICE AGREEMENT

12 The cooperation service agreement regulates the use of forensic experts provided either by a Member State or an NGO. In spite of the stipulations of article I, paragraph 2, of the agreement in annex I relating to the financial responsibility of a Member State or NGO offering a scientist's services, the trend has been for the United Nations to provide the forensic expert with a special contract and an environment (identity card, equipment and other resources) necessary to carry out the tasks assigned to him or her (art. II, para. 1).

13 Recent developments have, however, demonstrated that the United Nations may undertake to pay all expenses in connection with the services of the forensic experts, including honorariums and subsistence allowances and other benefits to which he or she is entitled, in

particular pursuant to the mandate laid down by the Commission on Human Rights in its resolution 1997/58 entitled "Situation of human rights in Zaire". Paragraph 7 (b) of resolution 1998/36 also referred to provisions in a revised standard arrangement for the protection of forensic experts who so serve. Practical implementation of resolution 1997/58 confirmed the necessity of requesting that the recipient Government ensures the protection of the members of the mission.

14. A revised version of a cooperation service agreement was submitted to the Commission on Human Rights for its consideration at its fifty-fourth session (E/CN.4/1998/32, annex II). The Commission did not endorse the text which, taking into account the recent developments in this field, does not require revision. The special service agreement regulating the relations of the individual forensic expert and the United Nations (ibid., annex III) is again attached as annex II

Annex I

COOPERATION SERVICE AGREEMENT

[Preambular paragraphs as required by the particular situation]

Article I

Obligations of the team of forensic experts

1. The team of the forensic experts agrees to make available for the duration and purpose of this agreement the services of (names) as forensic experts. Changes and modifications may be made with the agreement of the parties.

2. The team of forensic experts shall ensure that a certificate of good health is issued by a certified doctor, stating that the expert is fit to travel and has the required inoculations for the country or countries to which he/she travels.

3. The team of forensic experts undertakes to ensure that during the entire period of service under this Agreement, adequate medical and life insurance as well as insurance coverage for service-incurred illness, injury, disability or death is provided to the expert.

Article II

Obligations of the United Nations

1. The United Nations shall provide the forensic expert(s) with a Special Service Agreement and undertakes to pay all expenses in connection with the services of the forensic experts, including honorariums and subsistence allowances and other benefits to which he or she is entitled, and travel costs to and from any site of investigation. The United Nations shall provide the forensic experts with a United Nations Certificate, as well as with office space and other resources necessary to carry out the tasks assigned to him or her.

2. The United Nations does not accept any liability for claims for compensation in respect of illness, injury or death arising out of or related to the provision of services under this Agreement, except where they result from the gross negligence of the officials or staff of the United Nations.

Article III

Obligations of the forensic expert(s)

1. The forensic expert(s) agree(s) to the terms and obligations specified below, and shall ensure that the forensic expert(s) performing services under this Agreement comply with these obligations.

(a) The expert shall perform his or her functions under the authority and in full compliance with the instructions of the High Commissioner for Human Rights, a special rapporteur or representative, or United Nations officers acting on his/her behalf. Such instructions will be given following close consultation with the members of a mission.

(b) The expert shall

(i) Undertake a mission, from the period to ;

(ii) To the extent possible, in the framework of the investigations to be carried out by the mission and in conformity with applicable international norms and principles, conduct a forensic survey in areas or at sites determined by a mission. In particular, his or her work will concentrate on the excavation of test pits on mass graves thought to contain human remains. A small number of bodies will be examined in a preliminary way while in the field, in order to establish the case of death. In addition, he or she will prepare a plan for a future and longer forensic investigation if necessary;

(iii) Take all necessary measures to maintain the confidentiality of all information received or obtained with respect to his/her mandate, including the systematic and careful logging, safekeeping and preservation of its records and files;

(iv) Submit his/her main findings and conclusions in a preliminary confidential report to the High Commissioner, a special rapporteur or representative, together with recommendations as to further measures that should be considered, no later than , and

(v) Be terminated upon the completion of his/her final report, to be submitted to the High Commissioner, a special rapporteur or representative, together with all files and records including a complete inventory of sites and/or bodies examined together with photographic documentation, not later than

(c) The expert shall undertake to respect the impartiality and independence of the High Commissioner, a special rapporteur or representative and shall neither seek nor accept instructions regarding the services performed under this Agreement from any Government, authority or any other entity external to the United Nations.

(d) The expert shall refrain from any conduct which would adversely reflect on the High Commissioner, a special rapporteur or representative or which is incompatible with the aims and objectives of the United Nations.

(e) The expert shall comply with all rules, regulations, instructions, procedures or directives issued by the United Nations.

(f) The expert shall treat as confidential all documents, information or data received, compiled or processed by him or her. He or she shall exercise the utmost discretion in all matters relating to his or her functions and shall not communicate, at any time, without the authorization of the Secretary-General to the media or to any institution, person, Government or authority external to the United Nations, any information that has not been made public, and which has become known to him or her by reason of his or her association with the United Nations. He or she shall not use any such information without the written authorization of the Secretary-General and, in any event, such information shall not be used as personal gain. These obligations do not lapse upon expiration of this Agreement.

Article IV

Legal status of the forensic expert(s)

1. The forensic expert(s) shall not be considered in any respect as being an official or staff member of the United Nations.

2. The forensic expert(s) shall be considered an "expert on mission" within the meaning of article VI, sections 22 and 23, of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946, and shall be entitled to the privileges, immunities and facilities provided for thereunder, wherever he or she performs missions.

Article V

Use of the United Nations name and emblem

The forensic expert(s) shall, in no manner whatsoever, use the name, emblem or official seal of the United Nations, or any abbreviation thereof, in connection with his or her business or otherwise. The forensic expert(s) shall not advertise or otherwise make public the fact of his/her contractual relationship with the United Nations.

Article VI

Entry into force, duration and termination

1. This Agreement may be modified or amended only by written agreement between the parties.

2. Nothing in this Agreement shall be deemed a waiver, expressed or implied, of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946.

3 This Agreement shall enter into force upon signature, and shall remain in force for (duration of investigation). The Agreement may be terminated by either party, at any time before its expiry date, by giving the other party written notice of five days (in the case of contracts for a period of less than two months) or two weeks (in the case of contracts for a period of two months or more).

In witness whereof, the respective representatives of the United Nations and expert have signed this Agreement.

Done in , this day of 199 , in two originals in the English language.

| | |
|---|---|
| For the United Nations | For forensic expert(s) |
| Signature | Signature |
| (Name and title of authorized official) | (Name of authorized official of Member State or NGO) |
| Date | Date |

Annex II

SPECIAL SERVICE AGREEMENT

[Preambular paragraphs as required by the particular situation]

Obligations of the individual forensic expert

1. The expert agrees to make himself/herself available for the duration and the purpose of the Agreement.

2. The expert agrees to the terms and conditions specified in the "Special Service Agreement" contract herewith attached[1] and shall comply with the obligations herein stated.

3. The expert shall perform his or her functions under the authority and in full compliance with the instructions of the ... (special rapporteur/independent expert/working group of the Commission on Human Rights or the High Commissioner for Human Rights, as applicable).

4. The expert shall undertake to respect the impartiality and independence of the ... (special rapporteur/independent expert/working group/High Commissioner for Human Rights) and shall neither seek nor accept instructions regarding the services performed under this Agreement from any Government, authority or any other entity external to the United Nations.

5. The expert shall refrain from any conduct which would adversely reflect on the ... (special rapporteur/independent expert/working group/High Commissioner for Human Rights) or which is incompatible with the aims and objectives of the United Nations.

6. The expert shall comply with all rules, regulations, instructions, procedures or directives issued by the United Nations.

7. The expert shall, in no manner whatsoever, use the name, emblem or official seal of the United Nations, or any abbreviation thereof, in connection with his or her business or otherwise. The expert shall not advertise or otherwise make public the fact of his/her contractual relationship with the United Nations.

This Agreement shall enter into force upon signature of the contract herewith attached.

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[1] A Special Service Agreement (P.104) form is the standard form utilized by the United Nations to obtain the temporary services of individuals as consultants.

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Economic and Social
Council

Distr.
GENERAL

E/CN.4/2000/58
2 December 1999

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-sixth session
Item 11 (a) of the provisional agenda

# CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF TORTURE AND DETENTION

## Report of the working group on the draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on its eighth session

Chairman-Rapporteur: Ms. Elizabeth Odio Benito (Costa Rica)

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## Introduction

1. The Commission on Human Rights, in its resolution 1999/30, took note of the report of the working group on the draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (E/CN.4/1999/59 and Add.1) and requested the working group, in order to continue its work, to meet prior to the fifty-sixth session of the Commission for a period of two weeks, with a view to completing expeditiously a final and substantive text, and to report to the Commission at its fifty-sixth session.

2. The Economic and Social Council, in its decision 1999/237, authorized an open-ended working group of the Commission to meet for a period of two weeks prior to its fifty-sixth session.

## I. ORGANIZATON OF THE SESSION

### A. Opening of the session and election of officers

3. The working group held its eighth session from 4 to 15 October 1999. It was opened by the United Nations High Commissioner for Human Rights, Ms. Mary Robinson, who made an introductory statement.

4. At its first meeting, on 4 October 1999, the working group elected Ms. Elizabeth Odio Benito (Costa Rica) as Chairman-Rapporteur.

### B. Attendance

5. Representatives of the following States members of the Commission on Human Rights attended the meetings of the working group, which were open to all members of the Commission: Argentina, Austria, Canada, China, Colombia, Cuba, Ecuador, El Salvador, France, Germany, Guatemala, Ireland, Italy, Japan, Mexico, Morocco, Norway, Poland, Republic of Korea, Russian Federation, South Africa, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay and Venezuela.

6. The following States non-members of the Commission on Human Rights were represented by observers at the meetings of the working group: Algeria, Australia, Bahrain, Belgium, Brazil, Bulgaria, Costa Rica, Croatia, Denmark, Egypt, Estonia, Finland, Georgia, Hungary, Iran (Islamic Republic of), Lithuania, Netherlands, Slovakia, Spain, Sweden, Saudi Arabia, Syrian Arab Republic, Turkey and Ukraine.

7. The Holy See and Switzerland were also represented by observers.

8. The International Committee of the Red Cross and the following non-governmental organizations were represented by observers at the meetings of the working group: Amnesty International, Association for the Prevention of Torture, International Federation of ACAT (Action of Christians for the Abolition of Torture) and Human Rights Watch.

9 The Committee against Torture was represented by an observer

C Documentation

10 The working group had before it the following texts and documents

| | |
|---|---|
| E/CN 4/1999/WG 11/1 | Provisional agenda |
| E/CN 4/1999/59 and Add 1 | Report of the working group on its seventh session |
| E/CN 4/1999/WG 11/WP 1 | Working paper submitted by the secretariat |
| E/CN 4/1998/42 and Corr 1 | Report of the working group on its sixth session |
| E/CN 4/1997/33 | Report of the working group on its fifth session |
| E/CN 4/1996/28 and Corr 1 | Report of the working group on its fourth session |
| E/CN 4/1991/66 | Letter dated 15 January 1991 from the Permanent Representative of Costa Rica to the United Nations Office at Geneva addressed to the Under-Secretary-General for Human Rights |

D Organization of work

11 At its first meeting, on 4 October 1999, the working group adopted its agenda as contained in document E/CN 4/1999/WG 11/1

12 At the same meeting, the working group agreed with the proposal of the Chairman-Rapporteur to hold, during the first week of its session, a general discussion on the following issues

(a) Prevention mechanism the protocol as a preventive and not a punitive instrument,

(b) Dialogue and cooperation between the Subcommittee and States parties as the main principles of the protocol,

(c) Different aspects of cooperation

(i) Confidentiality and standing invitations to the Subcommittee,

(ii) Cooperation of States parties with the Subcommittee in the course of missions and visits,

(iii) Cooperation between the Subcommittee and States parties to implement recommendations of the Subcommittee,

(d) Framework of cooperation

(i) Different missions,

(ii) Modalities,

(iii) Places to visit,

(iv) Organization and conduct of missions,

(v) Follow-up (reports and recommendations),

(vi) Follow-up visits,

(e) Proposals for future work.

13. The working group also considered it appropriate that this general discussion be linked to texts of articles of the draft optional protocol proposed at previous sessions.

14. At the eighth meeting, on 7 October 1999, the working group decided, with regard to organizing its work on the consideration and drafting of various articles of the optional protocol during the second week of the session, to alternate, as needed, informal discussions with plenary meetings. Subsequently, a small drafting group was set up to speed up the drafting process (see also paragraph 50 below).

15. At its seventh meeting on 7 October 1999, at the request of the working group, the observer for the Association for the Prevention of Torture informed the participants about the contents and results of the discussion at the workshop entitled "Visits under international law: verification, monitoring and prevention". The workshop had been organized by the Association for the Prevention of Torture in cooperation with the Verification Research, Training and Information Centre (VERTIC), the International Commission of Jurists, the Quakers United Nations Office and the Foundation for International Environmental Law (FIELD) and held at Geneva on 23 and 24 September 1999. The objective of the workshop was to explore and discuss the subject of visits and missions as emerging standards of preventive, monitoring and verification procedures in international law, including human rights law. It provided a broad overview of the subject and explored similarities and differences between the experiences from different fields of international law (environmental law, human rights, humanitarian law and disarmament).

16. At the ninth meeting, on 12 October 1999, the observer for the Committee against Torture addressed the working group. He made comments on some of the new proposals relating to draft article 1 which the working group had before it and answered the questions put by participants regarding various aspects of the work of the Committee against Torture and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

## II GENERAL DISCUSSION

### A Prevention mechanism

17. At the first and second plenary meetings, on 4 October 1999, the working group discussed the issue of the optional protocol as an instrument of prevention. The discussion was held with reference to the preamble, article 3 (confidentiality) and article 18 (reservations) of the draft optional protocol (see E/CN.4/1997/33, annex I, E/CN.4/1996/28, annex I).

18. It was generally felt that the optional protocol would have a preventive rather than punitive character since its goal was not to sanction but to create an effective system of preventive visits in order to help States parties to improve the protection of persons deprived of their liberty. Prevention, cooperation and confidentiality were referred to as fundamental principles to achieve the main goals of the optional protocol.

19. With regard to confidentiality, several delegations considered this element to be a modus operandi, a methodology to be used in the implementation of the optional protocol. They felt that observing confidentiality was not an end in itself but a tool to facilitate confidence and to ensure that States would cooperate. Confidentiality was therefore important but not a core issue. According to another view shared by several delegations, confidentiality was one of the important principles on which the optional protocol was based and which could promote its acceptability by States. Reference was made in this connection to article 3 (3) stating that the principle of confidentiality was one of the guiding principles for the Subcommittee. The Chairman-Rapporteur subsequently proposed to consider confidentiality as a principle having a complementary, facilitating function, she also proposed that a reference to confidentiality, as well as to the principle of cooperation, be included in the preambular part of the optional protocol.

20. On the issue of reservations, several delegations felt that the text of the draft optional protocol should include the possibility of making reservations. It was argued that in accordance with the Vienna Convention on the Law of Treaties, any legal instrument could allow reservations. Since the optional protocol contained not only procedural but also substantive provisions imposing obligations on States parties, they should be entitled to make reservations. A reference was made to the Second Protocol to the Hague Convention of 1954 on the Protection of Cultural Property in the Event of Armed Conflict which was adopted in March 1999 and which does allow reservations. It was also pointed out that the possibility of making reservations would guarantee wider acceptance of the optional protocol. Alternatively it was proposed that those articles or concepts on which reservations would not be allowed be mentioned in the text of the optional protocol.

21. Another view, shared by several speakers, held that reservations could undermine the whole purpose of the optional protocol and the impartial functioning of its monitoring mechanism. It was crucial that no reservations to the optional protocol be allowed. It was also pointed out that draft article 13 already contained a "negotiated reservation" and that other(s) could be discussed if necessary. A reference was made to the Statute of the International

Criminal Court which does not allow any reservations. Some delegations considered that since the optional protocol was to be mainly institutional and procedural, it would be illogical to permit reservations to it.

22. The Chairman-Reporter concluded that in the absence of consensus, further discussion was needed on the issue of reservations.

23. As part of the effort to prevent torture, it was important to provide technical assistance to developing countries in the training of relevant personnel at places of detention. It was proposed to include a reference to such international assistance and cooperation in article 17 relating to the establishment of a special fund for such a purpose (see E/CN.4/1999/59, annex I). In this regard, it was also proposed to use as a model the wording of article 2 of the International Covenant on Economic, Social and Cultural Rights.

B. Dialogue and cooperation between the Subcommittee and States parties

24. At the third plenary meeting, on 5 October 1999, the working group held a discussion on the issue of dialogue and cooperation between the Subcommittee and States parties as the main principles of the optional protocol. Articles 1 (purpose and scope of the protocol) and 8 (types of missions and their notification) were considered to be of direct relevance to this discussion (see E/CN.4/1998/42, annex II).

25. There was general support for the statement that dialogue and cooperation were essential to ensuring the effectiveness of the optional protocol. It was emphasized that international cooperation and technical assistance were needed in order to improve conditions in prisons and other places of detention, in particular in developing countries; this was to be financed by the special fund envisaged in article 17, referred to in paragraph 23 above. It was felt appropriate to include in the text of the optional protocol the idea of a State-to-State dimension of such international cooperation.

26. With regard to draft article 1 and related issues, the following main questions were raised.

27. The view was expressed that the wording of article 1 (1) permitting visits to any place in any territory under a State party's jurisdiction might lead to a conflict of law or have a potential impact on non-State parties, particularly in cases when access would be sought to diplomatic missions or foreign military installations. In this connection, it was pointed out that article 2 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment also refers to any place within a State party's jurisdiction and that no exceptions were made to this provision nor had any problems been encountered in its implementation.

28. According to another opinion, visits "to any place" could not in practice be permitted because they might infringe some existing domestic regulations, or might conflict with national

security concerns in general. In this regard, it was argued that if national security concerns were to be invoked, this should be done in the context of visits by the Subcommittee rather than in the context of article 1.

29. It was also felt by some delegations that the meaning of the phrase "at its instigation or with its consent or acquiescence" in article 1 (1) was not clear enough since it could have a bearing on the categories of places to be open to visits. It was also suggested that this wording should be deleted because it provided wide scope for controversy in its interpretation. Others pointed out that this was the wording used in article 1 of the Convention against Torture.

30. Several delegations found that the notion of places where the persons deprived of their liberty "may be held" as stated in article 1 (1) was too broad and imprecise. Other speakers supported this wording and argued that in order to prevent torture, visits to all de facto places of detention should be allowed. Other delegations noted that the words were derived from article 1 of the Convention against Torture and argued that the optional protocol should not have a narrower scope than the Convention. An analysis was also offered that the notion of "may be held" would cover not only de facto places of detention but also places intended to serve as places of detention, such as prisons under construction.

31. With regard to the places that could be visited by the Subcommittee, a question was raised as to whether this referred only to those affiliated with the Government or also to those that were privately owned. The view was expressed that the links to acts or orders of public authorities should in all cases be clearly established.

32. With regard to the formula "in accordance with applicable international law and relevant international standards", as contained in article 1 (2), it was suggested that specific references should be added in the text to make national obligations more clear. A view was also expressed that the notion of "international standards" was undefined and problematic in application and should therefore be deleted. Another proposal was to replace this wording with "applicable international instruments and international law". Other delegations found the formula used in article 1 (2) sufficiently clear and therefore fully acceptable. In their view, relevant international standards included both binding (universal and regional) instruments as well as pertinent recommendatory documents ("soft law").

33. On the issue of periodic and other missions as envisaged in article 8 (1), some delegations expressed concern with regard to a lack of precision as to the grounds on which such ad hoc visits could take place. It was also pointed out that the obligation of States to accept visits which were "triggered" by allegations of torture had to be in line with their constitutional provisions protecting privacy and private property.

34. The scope of application suggested in draft articles 1 and 8 was found by some speakers to be wider than the corresponding standards of the European Convention for the Prevention of Torture. The view was expressed that the optional protocol could not go beyond the standards of the European Convention. It was also pointed out that in some developing countries resources might not be available to implement higher standards. Other speakers disagreed and insisted that it should be possible to establish new and improved standards in a new legal document.

C. Different aspects of cooperating and framework of cooperation

35. At the 4th, 5th and 6th meetings, on 5 and 6 October 1999, the working group discussed different aspects and the framework of cooperation with reference to articles 1 and 8 (see above), 12 (modalities of conducting a mission and visits - see E/CN.4/1996/28, annex I), 13 (exceptional circumstances in which a visit could be postponed - see E/CN.4/1999/59), annex II) and 14 (reporting and publicity - see E/CN.4/1996/28, annex I).

36. In this connection, the following main issues were discussed:

(a) Whether the ratification of the protocol by a State party implied that a standing invitation was extended to the Subcommittee or whether the Subcommittee should receive prior consent from the State party before each mission (arts. 1 and 8);

(b) Cooperation between the Subcommittee and the State party during a mission (art. 12);

(c) Exceptional circumstances in which a visit could be postponed (art. 13);

(d) Reporting and publicity (art. 14).

37. No agreement was reached in the working group on the first issue. The view was expressed that the principle of a standing invitation was necessary for the efficacy of the optional protocol. If the Subcommittee were to be obligated to enter into long negotiations with States parties prior to missions, it would have negative implications on the efficiency and the continuity of the Subcommittee's activities. It was emphasized that in the absence of a standing invitation, the optional protocol would bring no or limited added value to the Convention since article 20 of the Convention already allows the Committee against Torture to undertake confidential missions with the prior consent of the State party. Further, in view of earlier discussions on the subject, several delegations added that the principle of a standing invitation was in full conformity with the principle of national sovereignty, since the ratification of the protocol was optional and since the decision to ratify was itself an act of national sovereignty. It was also pointed out that standing invitations were a sign of continuity and long-term cooperation and favoured constructive dialogue with States.

38. Other delegations expressed the opinion that in view of the broad scope of draft article 1 in terms of the places and territories the Subcommittee was to be allowed to visit, a standing invitation would basically enable the Subcommittee to go anywhere at any time. Such far-reaching competence would be an infringement on the sovereignty of States and thus unacceptable. The concern was also expressed that including a standing invitation in the optional protocol would result in it being ratified by very few States.

39. Several speakers mentioned the possibility of having different standards relating to different types of missions, i.e. standing invitations for regular missions and another standard if the mission was occasioned by special circumstances and/or allegations of torture.

40. On the second issue, the working group concentrated on the scope of the cooperation envisaged between the States parties and the Subcommittee. Some delegations pointed out that their constitutional requirements and/or their national legislation, in particular on the right to privacy and private property, safety requirements, witness protection, etc., could prevent them from giving the Subcommittee free access to all types of information or places. Restrictions in national legislation could also limit the possibility of the Subcommittee to require testimony from detained persons or to interview prisoners "without witnesses".

41. It was emphasized by some delegations that it was a prerequisite to establish a framework for the normal work of the Subcommittee, including such elements as freedom of movement and access to all relevant information, places and persons.

42. On the third issue, it was strongly felt that representations against visits should be strictly limited, and only made for urgent and compelling reasons, which should be narrowly defined in the text; the general rule should be unhindered access for the Subcommittee. It was also suggested that any such representations should lead only to the postponement of a visit, not its cancellation.

43. Additional grounds for postponing a visit were proposed by some speakers, including the urgent interrogation of persons to be visited and the health problems of such persons. It was pointed out, with regard to the former, that under article 9 of the European Convention for the Prevention of Torture, urgent interrogation could only be an acceptable excuse when it was actually in progress, but not in relation to the whole process of criminal investigation. Doubts were also expressed concerning the acceptability of health problems as a valid ground for refusing access to the person in question. It was pointed out in this regard that as a result of torture or other cruel treatment or punishment, such persons were normally in very bad physical condition.

44. On the fourth issue, relating to the nature and implementation of recommendations, there was a general discussion on whether article 14 should basically be of a technical nature. It was proposed that two types of recommendations could normally be addressed to States parties by the Subcommittee: (a) those for more or less speedy implementation by the States parties themselves, and (b) those which were supposed to be progressively implemented by the States parties through technical assistance and cooperation financed by the special fund to be set up pursuant to article 17. The improvement of national legislation or the reform of penitentiary systems were mentioned as examples of the second type of recommendation. It was felt that the concept of technical assistance and cooperation should be duly highlighted in article 14.

45. According to another opinion, shared by some delegations, the missions of the Subcommittee should be of short duration (a few days only), the Subcommittee should comply with the principle of non-interference with the domestic affairs of States and its recommendations should be technical, realistic (feasible) and objective. Thus, recommendations should not relate to such issues as the penalty to be imposed or to substantive matters of national legislation which are exclusively within the sovereign competence of States. It was emphasized that in no case should the Subcommittee be acting as a supranational body.

46. On the question of public statements by the Subcommittee or the publication of its reports, it was widely felt that such "going public" would be an exceptional measure, the reports would normally be confidential unless the State concerned manifestly refused to cooperate.

47. While a public statement by the Subcommittee as a last resort in cases of a failure or refusal to cooperate was acceptable to many speakers, a view was expressed that this provision of draft article 14 still needed precision and that major amendments had to be made. Particular emphasis was placed on the need to arrive at a definition of the concept of the "failure to cooperate" or to identify the specific circumstances of non-cooperation and to determine who was to decide whether a State had been cooperative or not, and how this determination was to be made.

48. The view was expressed that the public statement and the publication of a report should not be seen as a punishment. In this regard, it was felt that according to the draft provision concerned, it was up to the Subcommittee to judge whether a State was cooperative or not and consequently to decide whether to publicize or not. It was argued that the Subcommittee would therefore become a de facto arbitrator and that this was incompatible with the nature of the Subcommittee and the optional protocol.

49. With reference to the question of publishing the reports of the Subcommittee, several delegations considered of particular importance the provision of article 14 (5) stating that no personal data should be published without the express consent of the person concerned.

50. Other issues raised in connection with article 14 included the contents of the reports of the Subcommittee, the feasibility of implementing its recommendations, the relationship between the Subcommittee and the Committee against Torture, the time-frame for the (progressive) implementation of the recommendations of the Subcommittee, and the question of how the special fund to be established under article 17 would be informed of the Subcommittee's recommendations.

## D. Proposals for future work

51. At the seventh and eighth meetings, on 7 October 1999, the working group discussed the organization of its work during the second week of the session. It was decided to set up three "baskets" of issues on which drafting would continue on the basis of the texts proposed during previous sessions and any new proposals received. The first basket contained the preambular part and articles 1, 8, 12 and 13. The second basket contained article 18, and the third basket was composed of articles 14, 16 and 17. Delegations wishing to present new or modified texts were requested to submit them in writing before the established deadline.

52. The written contributions received from the delegations of Australia, Canada, Egypt (also on behalf of Algeria, China, Cuba, Saudi Arabia, the Sudan and the Syrian Arab Republic) and Japan were before the working group on 11 October 1999 when it met in informal session and began its consideration and drafting of articles relating to the first basket of issues. A small drafting group consisting of authors or coordinators of written contributions as well as other interested delegations was established to speed up the drafting process.

53. In the course of informal meetings held on 12, 13 and 14 October 1999, the working group discussed the preliminary texts of the preamble and some of the articles relating to the first basket of issues which were prepared by the drafting group.

## III. CONSIDERATION AND DRAFTING OF PARAGRAPHS AND ARTICLES OF THE DRAFT OPTIONAL PROTOCOL

### A. Preamble and articles 1, 8, 12 and 13

54. At the tenth plenary meeting, on 14 October 1999, the working group had before it the consolidated texts of various proposals relating to the preamble and articles, 8, 12 and 13 as submitted by the informal drafting group (see annex II).

55. In introducing the proposals on behalf of the drafting group, the observer for Australia explained that disagreements which could not be resolved in the group were reflected in square brackets in the text. He pointed out that some delegations took the view that articles 8, 12 and 13 should only refer to visits and that a distinction between missions and visits should not be maintained in the text. Other delegations noted that the working group had already adopted a number of articles (e.g. art. 11) which reflected a distinction between missions and visits, a concept found in the first draft of the optional protocol (E/CN.4/1991/66). No agreement could therefore be reached on this issue, and the words "missions" and "visits" appeared as alternatives within brackets in draft articles 8, 12 and 13. The observer for Australia felt that this problem might be solved once the concerned delegations had had the time to review the implications of the distinction.

56. With regard to article 13, the observer for Australia indicated that many delegations agreed that this article should apply only to particular visits in the context of a mission to a country. The text reproduced in paragraph 66 of the report of the working group on its last session (E/CN.4/1999/59) was referred to in this regard. Other delegations argued that article 13 should apply to a mission to a country and not just to a visit which comprised part of a mission to a particular country, i.e. a decision whether to go to a country at all. Views were divided as to whether the grounds for postponing a visit contained in article 13 (1) should be limited to the grounds found in the European Convention for the Prevention of Torture. Some delegations argued that "the medical condition of a person" should not be included as a ground for postponement. In article 13 (2), a reference to transferring a person to be visited to another place was considered to be redundant given the reference to "arrangements to enable the Committee to exercise its functions" and therefore was deleted.

57. With regard to article 8, the observer for Australia explained that the draft text included in brackets the proposal of one group of countries for the optional protocol to provide only for

regular and not follow-up or ad hoc visits. In paragraph 1 (b), the term "reliable information" had been incorporated so as to be consistent with the language used in the Convention against Torture and the Convention on the Elimination of All Forms of Discrimination against Women. Some delegations argued that the Subcommittee, in making a notification under paragraph 2 (a), should be required to include a definitive list of places to be visited. Other delegations argued that this was too restrictive and that it might be appropriate for the Subcommittee, e.g. in relation to a regular mission, first to send a notification which would propose timing, with more details to be worked out during the period of consultation leading up to the mission. It was also explained that the words ["six months"] in paragraph 3 (a) reflected the view of some delegations that (i) a maximum time-limit should be imposed for the carrying out of a visit/mission beginning at the time of the notification so that a notification was not left without being acted upon, and (ii) a minimum period of prior notification should be required before any mission/visit took place. Many other delegations held the view that the protocol should not prescribe in detail the operating rules of the Subcommittee. The observer for Australia also pointed out that there was no agreement on the prior consent requirement contained in bracketed paragraph 2 (b).

58. In connection with article 12, it was explained that the first paragraph reflected closely the language found in draft article 12 as reproduced in paragraph 20 of the report of the working group on its last session (E/CN.4/1999/59). The drafting group ran out of time before it could fully consider the issue of whether an article X on national legislation should be included in the protocol and, if included, what content it should have. Some delegations insisted that if an article X on national legislation were included in the protocol, they might be able to accept article 12 (1) as drafted. Other delegations indicated that they opposed a separate article X on national legislation and, depending on the final form of paragraph 2 of article 12, they might be able to accept paragraph 1 as drafted. A number of other delegations stated that they could not accept at all a separate article X on national legislation as it would undermine the objectives of the protocol. All delegations agreed that paragraph 2 of article 12 required further development. In light of these divergent views the whole of article 12 was put in square brackets. In addition, the whole text of article X was also put in brackets.

59. With regard to the preamble, the observer for Australia noted that views were divided on whether to include the term "detained" or "deprived of their liberty". Many delegations pointed out that the term "deprived of their liberty" was more commonly used in the human rights arena and that the term "detained" could be too narrow. He also pointed out that there was no agreement on whether to include paragraph 3 of article 1. A number of delegations felt that the issues covered in that paragraph would be more appropriately addressed in article 13. Many delegations also expressed the view that the language of paragraph 3, if accepted, would provide for an excessively wide exclusion to the scope of the protocol.

60. The representative of Cuba suggested, with regard to article 8 (1) (b), that the concept of "reliable information" should be given further consideration to make it clearer by establishing precise criteria.

61. Following the proposal by the Chairman-Rapporteur, the working group agreed to include the text of the preamble and articles 1, 8, 12 and 13 as submitted to the plenary by the drafting group in annex II to the report of the working group to serve as a basis for future discussion.

B. Particular views expressed by some delegations

62. At the same meeting, several delegations expressed their particular views on the first basket of articles and related issues. These are given below.

63. The representative of Cuba, speaking also on behalf of the delegations of Algeria, China, Egypt, Saudi Arabia, the Sudan and the Syrian Arab Republic, made a joint statement on their position paper submitted to the Chair regarding the preamble and articles 1, 8, 12, 13 and X. They stated that starting from the preamble the content of the draft protocol should reflect clearly its cooperative, preventive, confidential, non-duplicative and advisory nature. It was also stated that it was possible to balance the sovereignty and legitimate concerns of States and the effectiveness of the protocol through the prior consent of the State to a visit. In this connection, the words "may" and "any place", as well as "deprived of their liberty", were too wide, controversial and undefined, and raised many problems relating to national security and domestic affairs.

64. Regarding the visits, the above delegations emphasized that while defining the word "visits", the protocol should be based on non-discriminatory regular visits to all States parties, avoiding any possibility of selectivity. They also pointed out that paragraph 1 of article 12 might be acceptable on the understanding that there would be an article X on national legislation. They underlined that the objections mentioned in article 13 were to be decided by the State party and should apply to a particular part of a visit but also, as appropriate, to a whole visit.

65. The representative of China, referring to the question of "visits" and "missions", stated that since the drafting process had been conducted in English only, the interpretation of those terms in other languages might appear to be quite different. Therefore, he felt it advisable to use one term only to avoid possible controversies in the future. He also reaffirmed the importance which his delegation attached to the provision that all missions or visits should be conducted only with the prior consent of the State concerned.

66. The representative of China also reiterated the importance of referring to national legislation in the optional protocol and recalled the understanding reached on this issue last year according to which article 12 had a close relationship with article X dealing with national legislation.

67. The observer for Denmark stated that her delegation would continue to show flexibility in the negotiations with a view to creating an effective mechanism of preventive visits providing the Subcommittee with a reasonable framework for its work. Her delegation hoped that the principle of cooperation would prevail and that the negotiations would continue in that spirit.

68. The observer for Switzerland said that his delegation had taken note of the remarks made by the representative of Cuba on behalf of a number of delegations. Although his Government did not share the concerns expressed, it would continue to negotiate in good faith, constructively and in a spirit of compromise so that an effective protocol could be adopted as soon as possible.

69. The observer for Australia, supported by several other delegations, suggested that a link be made between draft article 8 (3) and the arrangements referred to in article 12 (2).

70. The representative of the United States of America stated that his delegation would be hesitant to agree to such a link since that would imply that any arrangements mentioned in article 12 (2) should be worked out in advance of a visit. That, however, could be problematic since the circumstances on the ground could change.

71. The representative of Poland stated that although not much progress had been made during the current session of the working group, some small steps had been taken and the group should continue to move forward.

72. The observer for Costa Rica referred to the original text of the draft optional protocol as submitted by her Government in 1991 and expressed the hope that an effective system of preventive visits to places of detention would soon be established in order to strengthen the protection of persons deprived of their liberty.

73. The observer for the Association for the Prevention of Torture referred to the clear distinctions between "missions" and "visits" which had already been clearly settled at the previous sessions of the working group and reflected throughout the text of the optional protocol. The observer also pointed out that the optional protocol had always been intended to apply to "persons deprived of liberty", as opposed to the narrower concept of "detained persons". She expressed the concerns of her organization with regard to the attempts to reopen the debate on agreed language on these issues. She stated that the Subcommittee should be able to apply modalities in the conduct of a mission to everybody in order to promote its impartial and non-selective functioning and to ensure the universality of the protocol. She also reiterated that there had been no consensus in the working group with regard to the inclusion of a separate provision (article X) on national legislation in the optional protocol since it was not needed in an international instrument and could only limit the scope of its application.

## IV. FUTURE WORK

74. At its eleventh plenary meeting, on 15 October 1999, the representative of Guatemala proposed, on behalf of the Latin American group, to recommend to the Commission on Human Rights that the Chairman-Rapporteur of the working group should again be requested to continue her informal consultations in the period between the sessions of the working group on any remaining outstanding issues. The proposal was also supported by the delegations of Switzerland, Denmark, Georgia, Finland (on behalf of the European Union), Sweden, Canada, Australia, the United Kingdom of Great Britain and Northern Ireland and Turkey.

75. The representative of Cuba pointed out in this regard that when organizing her informal consultations, the Chairman-Rapporteur should bear in mind the heavy workload of various delegations.

76. The observer for Georgia proposed to recommend to the Commission on Human Rights to authorize the working group to hold an additional session of several days to speed up the drafting process. The representative of Cuba stated that his delegation did not agree to additional time for the working group which should remain within the time normally allocated to other important working groups which perform similar tasks.

## V. ADOPTION OF THE REPORT

77. The report of the working group was adopted ad referendum at the eleventh plenary meeting, on 15 October 1999. The details of the adoption will be included, if necessary, in an addendum to the present report.

Annex I

TEXT OF THE ARTICLES WHICH CONSTITUTE THE OUTCOME OF THE SECOND READING AT THE FIFTH, SIXTH AND SEVENTH SESSIONS*

Article 2

There shall be established a Subcommittee for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture which shall carry out the functions laid down in the present Protocol (hereinafter referred to as the Subcommittee); the Subcommittee shall be responsible for organizing missions to the States Parties to the present Protocol for the purposes stated in article 1.

Article 3

1 In the application of this Protocol the Subcommittee and the State Party concerned shall cooperate with each other.

2 The Subcommittee shall conduct its work within the framework of the Charter of the United Nations and be guided by the purposes and principles therein.

3 The Subcommittee shall also be guided by the principles of confidentiality, impartiality, universality and objectivity.

Article 4

1 The Subcommittee shall consist of 10 members. After the fiftieth accession to the present Protocol, the number of members of the Subcommittee shall increase to 25.

2 The members of the Subcommittee shall be chosen from among persons of high moral character, having proven professional experience in the field of the administration of justice, in particular in criminal law, prison or police administration or in the various medical fields relevant to the treatment of persons deprived of their liberty or in the field of human rights.

3 No two members of the Subcommittee may be nationals of the same State.

4 The members of the Subcommittee shall serve in their individual capacity, shall be independent and impartial and shall be available to serve the Subcommittee effectively.

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* As contained in document E/CN.4/1999/59, annex I. The number in brackets refers to the number of the article in the first-reading text (E/CN.4/1996/28, annex I).

Article 5

1 Each State Party may nominate, in accordance with paragraph 2, up to two candidates possessing the qualifications and meeting the requirements set out in article 4, and in doing so shall provide detailed information on the qualifications of the nominees.

2 (a) Nominees of the Subcommittee shall have the nationality of a State Party to the present Protocol.

(b) At least one of the two candidates shall have the nationality of the nominating State Party.

(c) Not more than two nationals of a State Party shall be nominated.

(d) Before a State Party nominates a national of another State Party, it shall seek and obtain the written consent of that State Party.

3 At least five months before the date of the meeting of the States Parties during which the elections will be held, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall submit a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them.

Article 6

The members of the Subcommittee shall be elected in the following manner:

1 Elections of the members of the Subcommittee shall be held at biennial meetings of States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Subcommittee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of the States Parties present and voting.

2 The initial election shall be held no later than six months after the date of entry into force of the present Protocol.

3 The States Parties shall elect the members of the Subcommittee by secret ballot.

4 In the election of the members of the Subcommittee, primary consideration shall be given to the fulfilment of the requirements and criteria of article 4. Furthermore, due consideration shall be given to a proper balance among the various fields of competence referred to in article 4, to equitable geographical distribution of membership and to the representation of different forms of civilization and legal systems of the States Parties.

5 Consideration shall also be given to balanced representation of women and men on the basis of the principles of equality and non-discrimination.

6. If, during the election process, two nationals of a State Party have become eligible to serve as members of the Subcommittee, the membership of the Subcommittee shall be resolved in the following manner in conformity with article 4, paragraph 3:

(a) The candidate receiving the higher number of votes shall serve as the member of the Subcommittee;

(b) Where the nationals have received the same number of votes, the following procedure applies:

(i) Where only one has been nominated by the State Party of which he or she is a national, that national shall serve as the member of the Subcommittee;

(ii) Where both nationals have been nominated by the State Party of which they are nationals, a separate vote by secret ballot shall be held to determine which national shall be the member;

(iii) Where neither national has been nominated by the State Party of which he or she is a national, a separate vote by secret ballot shall be held to determine which national shall be the member.

Article 7

If a member of the Subcommittee dies or resigns or for any other cause can no longer perform the member's Subcommittee duties, the State Party which nominated the member shall nominate another eligible person possessing the qualifications and meeting the requirements set out in article 4, taking into account the need for a proper balance among the various fields of competence, to serve until the next meeting of the States Parties, subject to approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.

Article 9 [6]

The members of the Subcommittee shall be elected for a term of four years. They shall be eligible for re-election once if renominated. The term of half of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these members shall be chosen by lot by the Chairman of the meeting referred to in article 6, paragraph 1.

Article 10 [7]

1. The Subcommittee shall elect its officers for a term of two years. They may be re-elected.

2. The Subcommittee shall establish its own rules of procedure, but these rules shall provide, inter alia, that:

(a) Half plus one members shall constitute a quorum;

(b) Decisions of the Subcommittee shall be made by a majority vote of the members present;

(c) The Subcommittee shall meet in camera.

3 The Secretary-General of the United Nations shall convene the initial meeting of the Subcommittee. After its initial meeting, the Subcommittee shall meet at such times as shall be provided in its rules of procedure.

Article 11 [9]

1 The Subcommittee may decide to postpone a mission to a State Party if the State Party concerned has agreed to a scheduled visit to its territory by the Committee against Torture, pursuant to article 20, paragraph 3 of the Convention. The dates of the rescheduled mission shall be determined taking into account the provisions of articles 1 and 8.

2 The Subcommittee, while respecting the principles set out in article 3, is encouraged to cooperate for the prevention of torture in general with the relevant United Nations organs and mechanisms as well as international, regional and national institutions or organizations working towards strengthening the protection of persons from torture and other cruel, inhuman or degrading treatment or punishment.

3 If, on the basis of a regional convention, a system of visits to places of detention similar to the one under the present Protocol is in force for a State Party, the Subcommittee shall still be responsible for missions to such a State Party under this Protocol, assuring its universal application. However, the Subcommittee and the bodies established under such regional conventions are encouraged to consult and cooperate with a view to the efficient promotion of the objectives of this Protocol, including on the matter of duplication of work.

Such cooperation may not exempt the States Parties belonging also to such conventions from cooperating fully with the Subcommittee.

4 The provisions of the present Protocol do not affect the obligations of States Parties to the four Geneva Conventions of 12 August 1949 and their Additional Protocols of 8 June 1997, or the possibility for any State Party to authorize the International Committee of the Red Cross to visit places of detention in situations not covered by international humanitarian law.

Article 13 [consolidated 10 and 11]

1 Missions should be carried out by at least two members of the Subcommittee, assisted by interpreters if necessary. If needed, the Subcommittee may be assisted by experts.

2 The Subcommittee shall upon deciding the composition of the mission take into account the particular objectives of the mission.

3. (a) The Subcommittee shall consult confidentially the State Party concerned, in particular regarding the composition and size of the mission other than with regard to the participating members of the Subcommittee.

(b) The State Party concerned may oppose the inclusion of an expert or interpreter in the mission to the territory under its jurisdiction, whereupon the Subcommittee shall propose alternatives.

4. No member of the delegation, with the exception of interpreters, may be a national of the State to be visited. The conduct of the delegation and of all of its members shall be bound by the criteria of independence, impartiality, objectivity and confidentiality.

5. Experts shall be subordinate to and assist the Subcommittee. With regard to a mission, they shall in all respects act on the instruction of and under the authority of the Subcommittee. They shall in no case undertake any missions by themselves under the present Protocol.

Article 14

1. In order to establish a list of experts available for the Subcommittee, each State Party may propose no more than five national experts, qualified in the areas covered by the present Protocol, giving due consideration to gender balance.

2. As needed, the United Nations and specialized agencies may also propose experts to be included on that list.

3. The Subcommittee will annually notify the States Parties of the comprehensive list of experts.

4. In special cases, where specific knowledge or experience is required for a particular mission, and such knowledge or experience is not available on the list of experts, the Subcommittee may include in a mission an expert who is not on the list.

5. In selecting experts for a mission, the Subcommittee shall give primary consideration to the professional knowledge and skills required, taking into account regional and gender balance.

Article 15 [12 bis]

Each State Party shall disseminate information about the present Protocol, the tasks of the Subcommittee and the facilities to be provided to the Subcommittee during a mission to all concerned authorities and ensure the inclusion of such information in the training of relevant personnel, civil, police and military, who are involved in the custody, interrogation or treatment of persons in situations referred to in article 1.

Article 16 [16]

1. The expenditure incurred by the implementation of the present Protocol, incuding missions, shall be borne by the United Nations.

2. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Subcommittee under the present Protocol.

Article 17 [16 bis]

1. A Special Fund shall be set up in accordance with General Assembly procedures, to be administered in accordance with the financial regulations and rules of the United Nations, to help finance the implementation of the recommendations made by the Subcommittee to a State Party expressing the need for additional assistance for its ongoing efforts to improve the protection of persons deprived of their liberty.

2. This Fund may be financed through voluntary contributions made by Governments, intergovernmental and non-governmental organizations as well as other private or public entities.

Article 18 [17]

1. The present Protocol is open for signature by any State which has signed the Convention.

2. The present Protocol is subject to ratification by any State which has ratified or acceded to the Convention. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Protocol shall be open to accession by any State which has ratified or acceded to the Convention.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

Article 19 [18]

1. The present Protocol shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying the present Protocol or acceding to it after the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or instrument of accession, the present Protocol shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

Article 20 [18 bis]

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

Article 21 [19]

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the present Protocol and the Convention. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any act or situation which occurs prior to the date at which the denunciation becomes effective, or to the actions that the Subcommittee has decided or may decide to adopt with respect to the State Party concerned, nor shall denunciation prejudice in any way the continued consideration of any matter which is already under consideration by the Subcommittee prior to the date at which the denunciation becomes effective.

3. Following the date at which the denunciation of the State Party becomes effective, the Subcommittee shall not commence consideration of any new matter regarding that State.

Article 22 [19 bis]

1. Any State Party to the present Protocol may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties to the present Protocol with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States Parties present and voting at the conference shall be submitted by the Secretary-General of the United Nations to all States Parties for acceptance.

2. An amendment adopted in accordance with paragraph 1 of the present article shall come into force when it has been accepted by a two-thirds majority of the States Parties to the present Protocol in accordance with their respective constitutional process.

3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Protocol and any earlier amendment which they have accepted.

Article 23 [20]

Members of the Subcommittee and of missions authorized under the present Protocol shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions. In particular, they shall be accorded the privileges and immunities specified in section 22 of the Convention on Privileges and Immunities of the United Nations of 13 February 1946, subject to the provisions of section 23 of that Convention.

Article 24

In the conduct of missions, all members shall without prejudice to the provisions and purposes of the present Protocol and such privileges and immunities as they may enjoy:

(a) Respect the laws and regulations of the visited State, and

(b) Refrain from any action or activity incompatible with the impartial and international nature of their duties.

Article 25 [21]

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States.

Annex II

TEXT OF THE ARTICLES WHICH CONSTITUTE THE BASIS FOR FUTURE WORK

Preamble

The States Parties to the present Protocol,

Considering that in order to further achieve the purpose of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereafter referred to as the Convention) it is appropriate to strengthen the protection of [persons deprived of their liberty from torture and other cruel, inhuman or degrading treatment or punishment] [the detained persons],

Considering that the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment could be strengthened by non-judicial means of a preventive character based on visits,

Bearing in mind also the principles of cooperation and confidentiality as basic principles of the present Protocol,

[Affirming that non-judicial, non-selective, non-duplicative and technical consultative visits can lead to the realization of the provisions of the present Protocol, and complement the functions of the Convention against Torture and other human rights mechanisms related to torture,]

Have agreed as follows

Article 1

1 The objective of this Protocol is to establish a preventive visiting mechanism to examine the treatment of persons [deprived of their liberty] [detained] with a view to recommending means for strengthening, if necessary, the protection of such persons from torture and other cruel, inhuman or degrading treatment or punishment [as defined under international law applicable to the State Party] [and relevant international standards]

2 Each State Party agrees to permit visits, [in principle,] in accordance with this Protocol, to [any place] [places of detention] [on any territory] under its jurisdiction [and control] where persons (may, based on reliable information [as determined by a competent and independent judicial authority of the State Party concerned] be deprived or) are [deprived of their liberty] [detained] [including structures intended or used to house or transport such persons] by [or pursuant to an order of] a public authority [or at its instigation or with its consent or acquiescence]

[3. Nothing in this Protocol will be interpreted as allowing

(a) Visits to any civil or military facility that the State considers related to strategic national interest, or

(b) Interference in the domestic affairs of Member States in a manner which exceeds the provisions of the present Protocol ]

Article 8

1. The Subcommittee

(a) Shall establish, on the basis of a transparent and impartial procedure, a programme of regular [missions] [visits] to all States Parties [A reasonable frequency for the [missions] [visits] shall bedecided by agreement with State[s] Party[ies],

[these regular [missions] [visits] include follow-up missions,

(b) Shall also undertake such other [missions] [visits] as appear to it to be required in the circumstances and based on reliable information, [determined as described in article 1 of the Protocol] with a view to firthering the aims of this Protocol],

2. (a) The Subcommittee shall send a written notification to the Government of the State Party concerned of its [intention] [request] to organize a [mission] [visit], [followed by] [including] a list of placesto be visited and the composition of the delegation. [The Subcommittee may also vsit other places as needed during its mission],

[(b) Those [missions] [visits] shall be conducted after the consent of the State concerned and shall be mutually agreed upon between the Subcommittee and the State Party in a spirit of cooperation],

(c) [Missions] [visits] shall be organized and carried out in accordance with the principles set out in article 5 of the Protocol.

3. [(a)] [Six months] Before a [mission] [visit] is carried out, the Subcommittee and the State Party concerned shall, [if either of them so requests,] enter into consultations with a view to agreeing [without delay on the practical arrangements] [on the modalities] of the [mission] [visit],

[(b) Such consultations on the practical arrangements for the [mission] [visit] may not include negotiations on the obligations of a State Party under article 1 of the Protocol]

Article 12

[1. The Subcommittee and the State Party shall cooperate with a view to the effective fulfilment of the [mission] [visit]. In particular, the State Party shall provide

(c) The delegation with access to, and freedom of movement within, any territory under its jurisdiction [and control] for the conduct of the [mission] [visit],

(d) The Subcommittee or its delegations with all information relevant to the effective conduct of the [mission] [visit], including in particular on any person or places referred to in article 1 of the Protocol,

(e) The delegation with access to and within any place referred to in article 1 of the Protocol,

(f) The delegation with access to persons referred to in article 1 of the Protocol, and the opportunity for private interviews with them,

(g) The Subcommittee and its delegation with the opportunity to communicate freely with any other person who is in a position to supply relevant information

[2 The obligations referred to above shall be subject to any arrangements that the State Party concerned considers necessary for

[(a) The protection of sensitive areas [equipment] or information [based on imperative grounds of national security] [or economic, technological or scientific secrets],]

[(b) The protection of any constitutional obligations the State Party concerned may have with regard to proprietary rights, searches and seizures, or other constitutional rights [of individuals],]

[(c) The physical protection and safety of persons, including the members of the Subcommittee, and ]

[(d) The protection of personal data of individuals as required by national legislation [consistent with human rights principles]].

If the State Party is unable to provide full access to places, information or persons, the State Party shall make every reasonable effort to demonstrate to the Subcommittee, through alternative means, its compliance with this Protocol.]]

[Article X

The provisions of this Protocol shall be applied in accordance with domestic legislation consistent with the Charter of the United Nations and other international obligations of the State.]

Article 13

1 In exceptional circumstances, [in the context of a mission,] the competent authorities of the State Party concerned may make objections to the Subcommittee [or its delegation] against a particular visit [or a mission] Objections may only be made on [urgent and compelling] grounds of national defence, public [or individual] safety, natural disasters, serious disorder in [the place to be visited] [places where persons are detained,] [the medical condition of a person] [or that an urgent interrogation relating to a serious crime is in progress] [which temporarily prevent the carrying out of a visit The existence of a state of emergency as such should not be invoked by a State Party as a reason to object to a visit]

2 Following any such objections, the Subcommittee and the State Party shall [immediately] enter into consultations regarding those circumstances and seek agreement on arrangements to enable the Committee to exercise its functions [expeditiously] [Until the [mission or] visit takes place, the State Party shall provide information to the Subcommittee about persons or places relevant to its [mission or] visit ]

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UNITED
NATIONS

E

Economic and Social
Council

Distr
GENERAL

E/CN.4/2000/59
1 December 1999

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-sixth session
Item 11 (a) of the provisional agenda

# CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF TORTURE AND DETENTION

## Status of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

### Report of the Secretary-General

1. The General Assembly, in its resolution 39/46 of 10 December 1984, adopted and opened for signature, ratification and accession the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and called upon all Governments to consider signing and ratifying the Convention as a matter of priority.

2. The Convention was opened for signature in New York on 4 February 1985. In accordance with article 27 thereof, the Convention entered into force on 26 June 1987, on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

3. In its resolution 1999/32 of 26 April 1999, the Commission on Human Rights urged all States to become parties to the Convention as a matter of priority; invited all States ratifying or acceding to the Convention and those States parties which had not yet done so to make the declarations provided for in articles 21 and 22 of the Convention and to consider the possibility of withdrawing their reservations to article 20; and urged States parties to notify the Secretary-General of their acceptance of the amendments to articles 17 and 18 of the Convention[1] as soon as possible.

4 As at 1 November 1999, the Convention had been ratified, acceded or succeeded to by 118 States. In addition, 9 States had signed the Convention. The list of States that have signed, ratified or acceded to the Convention, as well as the dates of their signature, ratification or accession, is contained in the annex to the present report.

5 As at the same date, 40 of the States parties to the Convention, namely Algeria, Argentina, Australia, Austria, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Ecuador, Finland, France, Greece, Hungary, Iceland, Italy, Liechtenstein, Luxembourg, Malta, Monaco, the Netherlands, New Zealand, Norway, Poland, Portugal, the Russian Federation, Senegal, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Togo, Tunisia, Turkey, Uruguay, Venezuela and Yugoslavia, had made the declarations provided for in articles 21 and 22 of the Convention. In addition, three States parties, namely Japan, the United Kingdom of Great Britain and Northern Ireland and the United States of America, had made the declaration provided for in article 21 only, thus bringing the total of declarations under that article to 42 [2]. Under article 21, a State party to the Convention may declare at any time that it recognizes the competence of the Committee against Torture to receive and consider communications to the effect that a State party claims that another State party is not fulfilling its obligations under the Convention. Under article 22, a State party to the Convention may declare at any time that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State party of the provisions of the Convention.

6 The provisions of articles 21 and 22 entered into force on 26 June 1987 in accordance with paragraph 2 of article 21 and paragraph 8 of article 22.

7 The Committee against Torture held its twenty-second and twenty-third sessions at the United Nations Office at Geneva from 26 April to 14 May 1999 and from 8 to 19 November 1999, respectively. In accordance with article 24 of the Convention, the Committee submitted its annual report,[3] which covered the activities of the Committee at its twenty-first and twenty-second sessions, to the States parties and to the General Assembly at its fifty-fourth session.

8 The seventh meeting of the States parties to the Convention was convened by the Secretary-General at the United Nations Office at Geneva on 24 November 1999, to elect five members of the Committee against Torture to replace those whose terms of office were due to expire on 31 December 1999. In accordance with article 17 of the Convention, five members of the Committee against Torture were elected for a term of four years beginning 1 January 2000. Accordingly, the membership of the Committee for 2000 will be as follows:

| Name of members | Country of nationality | Term expires on 31 December |
|---|---|---|
| Mr Peter Thomas BURNS (Chairman) | Canada | 2003 |
| Mr Guibril CAMARA (Vice-Chairman) | Senegal | 2003 |
| Mr Sayed Kassem EL MASRY | Egypt | 2001 |
| Ms Felice GAER | United States of America | 2003 |
| Mr Alejandro GONZALEZ POBLETE (Vice-Chairman) | Chile | 2003 |
| Mr Andreas MAVROMMATIS | Cyprus | 2003 |
| Mr António SILVA HENRIQUES GASPAR | Portugal | 2001 |
| Mr Bent SØRENSEN (Rapporteur) | Denmark | 2001 |
| Mr Alexander M YAKOVLEV | Russian Federation | 2001 |
| Mr YU Mengjia | China | 2001 |

Notes

[1] Adopted by the Conference of the States parties on 9 September 1992 in accordance with article 29, paragraph 1, of the Convention (CAT/SP/SR 4) and endorsed by the General Assembly in its resolution 47/111 of 16 December 1992

[2] The text of the declarations, reservations or objections made by States parties up to 1 February 1998 with respect to the Convention is contained in document CAT/C/2/Rev 5

[3] Official Records of the General Assembly, Fifty-fourth session, Supplement No 44 (A/54/44)

ANNEX

List of States which have signed, ratified or acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as at 1 November 1999

| State | Date of signature | Date of receipt of the instrument of ratification, accession or succession |
|---|---|---|
| Afghanistan | 4 February 1985 | 1 April 1987 |
| Albania | | 11 May 1994[b] |
| Algeria[a] | 26 November 1985 | 12 September 1989 |
| Antigua and Barbuda | | 19 July 1993[b] |
| Argentina[a] | 4 February 1985 | 24 September 1986 |
| Armenia | | 13 September 1993[b] |
| Australia[a] | 10 December 1985 | 8 August 1989 |
| Austria[a] | 14 March 1985 | 29 July 1987 |
| Azerbaijan | | 16 August 1996[b] |
| Bahrain | | 6 March 1998[b] |
| Bangladesh | | 5 October 1998[b] |
| Belarus | 19 December 1985 | 13 March 1987 |
| Belgium | 4 February 1985 | 25 June 1999 |
| Belize | | 17 March 1986[b] |
| Benin | | 12 March 1992[b] |
| Bolivia | 4 February 1985 | 12 April 1999 |
| Bosnia and Herzegovina | | 6 March 1992[c] |
| Brazil | 23 September 1985 | 28 September 1989 |
| Bulgaria[a] | 10 June 1986 | 16 December 1986 |
| Burkina Faso | | 4 January 1999[b] |
| Burundi | | 18 February 1993[b] |
| Cambodia | | 15 October 1992[b] |
| Cameroon | | 19 December 1986[b] |
| Canada[a] | 23 August 1985 | 24 June 1987 |
| Cape Verde | | 4 June 1992[b] |
| Chad | | 9 June 1995[b] |
| Chile | 23 September 1987 | 30 September 1988 |
| China | 12 December 1986 | 4 October 1988 |
| Colombia | 10 April 1985 | 8 December 1987 |
| Costa Rica | 4 February 1985 | 11 November 1993 |
| Côte d'Ivoire | | 18 December 1995[b] |
| Croatia[a] | | 8 October 1991[c] |
| Cuba | 27 January 1986 | 17 May 1995 |
| Cyprus[a] | 9 October 1985 | 18 July 1991 |
| Czech Republic | | 1 January 1993[c] |

| State | Date of signature | Date of receipt of the instrument of ratification, accession or succession |
|---|---|---|
| Democratic Republic of the Congo | | 18 March 1996[b] |
| Denmark[a] | 4 February 1985 | 27 May 1987 |
| Dominican Republic | 4 February 1985 | |
| Ecuador[a] | 4 February 1985 | 30 March 1988 |
| Egypt | | 25 June 1986[b] |
| El Salvador | | 17 June 1996[b] |
| Estonia | | 21 October 1991[b] |
| Ethiopia | | 14 March 1994[b] |
| Finland[a] | 4 February 1985 | 30 August 1989 |
| France[a] | 4 February 1985 | 18 February 1986 |
| Gabon | 21 January 1986 | |
| Gambia | 23 October 1985 | |
| Georgia | | 26 October 1994[b] |
| Germany | 13 October 1986 | 1 October 1990 |
| Greece[a] | 4 February 1985 | 6 October 1988 |
| Guatemala | | 5 January 1990[b] |
| Guinea | 30 May 1986 | 10 October 1989 |
| Guyana | 25 January 1988 | 19 May 1988 |
| Honduras | | 5 December 1996[b] |
| Hungary[a] | 28 November 1986 | 15 April 1987 |
| Iceland[a] | 4 February 1985 | 23 October 1996 |
| India | 14 October 1997 | |
| Indonesia | 23 October 1985 | 28 October 1998 |
| Ireland | 28 September 1992 | |
| Israel | 22 October 1986 | 3 October 1991 |
| Italy[a] | 4 February 1985 | 12 January 1989 |
| Japan[d] | | 29 June 1999[b] |
| Jordan | | 13 November 1991[b] |
| Kazakhstan | | 26 August 1998 |
| Kenya | | 21 February 1997[b] |
| Kuwait | | 8 March 1996[b] |
| Kyrgyzstan | | 5 September 1997[b] |
| Latvia | | 14 April 1992[b] |
| Libyan Arab Jamahiriya | | 16 May 1989[b] |
| Liechtenstein[a] | 27 June 1985 | 2 November 1990 |
| Lithuania | | 1 February 1996[b] |
| Luxembourg[a] | 22 February 1985 | 29 September 1987 |
| Malawi | | 11 June 1996[b] |
| Mali | | 26 February 1999[b] |
| Malta[a] | | 13 September 1990[b] |

| State | Date of signature | Date of receipt of the instrument of ratification, accession or succession |
|---|---|---|
| Mauritius | | 9 December 1992[b] |
| Mexico | 18 March 1985 | 23 January 1986 |
| Monaco[a] | | 6 December 1991[b] |
| Morocco | 8 January 1986 | 21 June 1993 |
| Mozambique | | 14 September 1999[b] |
| Namibia | | 28 November 1994[b] |
| Nepal | | 14 May 1991[b] |
| Netherlands[a] | 4 February 1985 | 21 December 1988 |
| New Zealand[a] | 14 January 1986 | 10 December 1989 |
| Nicaragua | 15 April 1985 | |
| Niger | | 5 October 1998[b] |
| Nigeria | 28 July 1988 | |
| Norway[a] | 4 February 1985 | 9 July 1986 |
| Panama | 22 February 1985 | 24 August 1987 |
| Paraguay | 23 October 1989 | 12 March 1990 |
| Peru | 29 May 1985 | 7 July 1988 |
| Philippines | | 18 June 1986[b] |
| Poland[a] | 13 January 1986 | 26 July 1989 |
| Portugal[a] | 4 February 1985 | 9 February 1989 |
| Republic of Korea | | 9 January 1995[b] |
| Republic of Moldova | | 28 November 1995[b] |
| Romania | | 18 December 1990[b] |
| Russian Federation[a] | 10 December 1985 | 3 March 1987 |
| Saudi Arabia | | 22 September 1997[b] |
| Senegal[a] | 4 February 1985 | 21 August 1986 |
| Seychelles | | 5 May 1992[b] |
| Sierra Leone | 18 March 1985 | |
| Slovakia[a] | | 29 May 1993[c] |
| Slovenia[a] | | 16 July 1993[b] |
| Somalia | | 24 January 1990[b] |
| South Africa[a] | 29 January 1993 | 10 December 1998 |
| Spain[a] | 4 February 1985 | 21 October 1987 |
| Sri Lanka | | 3 January 1994[b] |
| Sudan | 4 June 1986 | |
| Sweden[a] | 4 February 1985 | 8 January 1986 |
| Switzerland[a] | 4 February 1985 | 2 December 1986 |
| Tajikistan | | 11 January 1995[b] |
| The former Yugoslav Republic of Macedonia | | 12 December 1994[c] |
| Togo[a] | 25 March 1987 | 18 November 1987 |
| Tunisia[a] | 26 August 1987 | 23 September 1988 |

| State | Date of signature | Date of receipt of the instrument of ratification, accession or succession |
|---|---|---|
| Turkey[a] | 25 January 1988 | 2 August 1988 |
| Turkmenistan | | 25 June 1999[b] |
| Uganda | | 3 November 1986[b] |
| Ukraine | 27 February 1986 | 24 February 1987 |
| United Kingdom of Great Britain and Northern Ireland[d] | 15 March 1985 | 8 December 1988 |
| United States of America[d] | 18 April 1988 | 21 October 1994 |
| Uruguay[a] | 4 February 1985 | 24 October 1986 |
| Uzbekistan | | 28 September 1995[b] |
| Venezuela[a] | 15 February 1985 | 29 July 1991 |
| Yemen | | 5 November 1991[b] |
| Yugoslavia[a] | 18 April 1989 | 10 September 1991 |
| Zambia | | 7 October 1998[b] |

Notes

[a] Made the declaration under articles 21 and 22 of the Convention.

[b] Accession.

[c] Succession.

[d] Made the declaration under article 21 of the Convention.

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UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/2000/60
15 December 1999

ENGLISH
Original: ENGLISH/FRENCH

COMMISSION ON HUMAN RIGHTS
Fifty-sixth session
Item 11 (a) of the provisional agenda

# CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF TORTURE AND DETENTION

## United Nations Voluntary Fund for Victims of Torture

## Report of the Secretary-General

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GE.99-16370 (E)

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## I ANNUAL REPORTS

1 In conformity with the arrangements adopted by the General Assembly for the management of the United Nations Voluntary Fund for Victims of Torture, the Secretary-General draws up an annual report to the General Assembly, indicating the funds available, pledges made and contributions received, together with disbursements from the Fund (resolution 36/151). In its resolution 53/139 of 9 December 1998, the General Assembly also requested the Secretary-General to submit to the Commission on Human Rights a report on the operations of the Fund (para. 23).

2. The Commission on Human Rights, in its resolution 1999/32 of 26 April 1999 (para. 37), requested the Secretary-General to continue to keep it informed on an annual basis of the operations of the Fund. The Secretary-General draws the attention of the Commission to his annual report on the Fund, submitted to the General Assembly at its fifty-fourth session (A/54/177), which is available to the Commission and which should be read in conjunction with this report.

## II FINANCIAL STATUS

3 At its eighteenth session (17-28 May 1999), the Board of Trustees of the Fund had recommended that, for the period June 1999 to May 2000, grants of approximately US$ 5.1 million (A/54/177, para. 16) should be awarded to medical, psychological, psychiatric, economic, social, humanitarian and legal assistance programmes, which were approved in June 1999 by the High Commissioner for Human Rights on behalf of the Secretary-General (paras. 18 and 21). At the time of writing (29 November 1999), about US$ 4.3 million has already been disbursed. A further $485,000 earmarked for grants could still be disbursed before the next session of the Board of Trustees, due to be held from 15 to 26 May 2000, if the additional information requested by the Board of Trustees and/or the secretariat of the Fund is received from the organizations concerned and is satisfactory. An amount of $100,000 is currently available, until the next session of the Board, for urgent grants to individuals, as well as an amount of $200,000 for urgent grants to organizations in financial difficulty because European Commission grants are not forthcoming.

### A Contributions paid

4 In accordance with resolutions 53/139 of the General Assembly (para. 15) and 1999/32 of the Commission on Human Rights (para. 32), donors are invited to make any new contributions before the annual session of the Board of Trustees, preferably before the end of February, so that the contribution can be duly recorded and available for allocation at the following session of the Board. Contributions not officially recorded before the session will be considered at the following session. The Board of Trustees bases its financial recommendations on the total contributions actually paid and duly recorded; it does not take pledges into account.

5 The contributions received in time for allocation at the eighteenth session of the Board are shown in the report of the Secretary-General to the General Assembly (A/54/177, para. 10, table 2). The contributions that had not yet been officially recorded before the eighteenth session (17-28 May 1999), or which were recorded afterwards, are shown in table 1 below, drawn up on

29 November 1999 from the information available to the Office of the High Commissioner The Board will take them into consideration at its nineteenth session, due to be held from 15 to 26 May 2000

Table 1 Paid contributions that will be taken into consideration at the nineteenth session of the Board of Trustees

| State | Amount (US$) | Recorded | Intended for | Contribution No |
|---|---|---|---|---|
| Argentina | 3 000 | 24 08 99 | 1999 | 10 |
| Argentina | 7 052 | 30 08 99 | 1999 | 11 |
| Austria | 20 000 | 22 10 99 | 1999 | 16 |
| Denmark | 278 571 | 09 07 99 | 1999 | 17 |
| Germany | 72 505 | 19 11 99 | 1999 | 17 |
| Germany | 47 336 | 19 11 99 | 1999 | 18 |
| Ireland | 59 368 | 08 06 99 | 1999 | 15 |
| Luxembourg | 12 949 | 21 05 99 | 1999 | 16 |
| New Zealand | 15 687 | 21 05 99 | 1999 | 13 |
| Poland | 10 000 | 06 10 99 | 2000 | 1 |
| Portugal | 15 000 | 22 06 99 | 1999 | 4 |
| Saudi Arabia | 20 000 | 12 11 99 | 1999 | 2 |
| Spain | 44 317 | 19 11 99 | 1999 | 14 |
| Sweden | 245 843 | 28 10 99 | 1999 | 13 |
| TOTAL | 852 569 | | | |

B Pledges

6 Donor Governments can make pledges to the Fund in several ways

(a) Directly by letter to the United Nations High Commissioner for Human Rights, copied to the secretariat of the United Nations Voluntary Fund for Victims of Torture (see para 42 below),

(b) At the United Nations Pledging Conference for Development Activities held in New York (the most recent Conference was held on 2 and 3 November 1999),

(c) At the annual session of the Commission on Human Rights in Geneva,

(d) At the briefings for regular donors organized by the secretariat of the Fund (the next briefing will take place on 9 December 1999 at the Palais des Nations in Geneva),

(e) At the meeting between donors and members of the Board of Trustees, which usually takes place on the last day of the annual session in May (the next meeting should therefore take place on 26 May 2000);

(f) When a State party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment submits a report to the Committee against Torture.

7. As at 29 November 1999, the following pledges were due to be paid before the next session of the Board of Trustees:

Table 2. Pledges

| State | Amount (US$) | Intended for | Announced on | Contribution No. |
|---|---|---|---|---|
| Algeria | 5 000 | 2000 | 02-03.11.1999[a] | 9 |
| Brazil | 10 000 | 1995 | 20.12.1994 | 7 |
| Brazil | 10 000 | 1996 | 02.11.1995 | 8 |
| Brazil | 10 000 | 1998 | 04.11.1997 | 9 |
| Chile | 10 000 | 2000 | 02-03.11.1999[a] | 8 |
| Cyprus | 933 | 1999 | 02-03.11.1999[a] | 11 |
| Monaco | 10 000 | 2000 | 02-03.11.1999[a] | 7 |
| Netherlands | 537 634 | 1999 | 04.11.1998 | 18 |
| Philippines[b] | 3 750 | 1998 | 11.04.1997 | 3 |
| Philippines | 2 595 | 1999 | 04.11.1998 | 4 |
| Tunisia | 2 000 | 1999 | 08.10.1998 | 8 |
| Tunisia | 1 684 | 2000 | 02-03.11.1999[a] | 9 |
| Turkey | 5 000 | 2000 | 02-03.11.1999[a] | 2 |
| United Kingdom | 216 666 | 1999 | 02.02.1999 | 12 |
| TOTAL | 825 262 | | | |

[a] Pledged at the Pledging Conference for Development Activities.

[b] The Government of the Philippines had pledged US$ 10,000, of which US$ 6,250 has been paid.

8. The Staff Coordinating Council of the United Nations Office at Geneva decided in 1998 that all profits from the 1998 Staff Gala would be paid to the Fund.

## III. FUND-RAISING

### A. Calls for contributions

#### 1. General Assembly

9. In its resolution 53/139 of 9 December 1998, the General Assembly expressed its gratitude to the Governments, organizations and individuals that had already contributed to the Fund. It also requested all Governments, organizations and individuals to respond favourably to calls for contributions to the Fund, if possible on a regular annual basis before the meeting of the Board of Trustees of the Fund, preferably by the end of February, and if possible also with a substantial increase in the level of contributions, so that consideration might be given to the increasing demand for assistance. The General Assembly requested the Secretary-General to transmit its appeal to all Governments.

#### 2. Commission on Human Rights

10. The Commission on Human Rights, in its resolution 1999/32 of 26 April 1999, encouraged those Governments, organizations and individuals that had already contributed to the Fund to continue to do so. It invited those Governments, organizations and individuals that were able to do so to increase their contributions considerably, in order to take into consideration the ever-increasing demand for assistance. It recalled the request by the Board of Trustees that contributions should be paid before the Board's annual meeting.

#### 3. Joint Declaration of 26 June 1999

11. The General Assembly, in its resolution 52/149 of 12 December 1997, declared 26 June the United Nations International Day in Support of Victims of Torture. At the initiative of the Chairman of the Board of Trustees of the Fund, which was approved by the High Commissioner and then by the Chairman of the Committee against Torture and the Special Rapporteur of the Commission on Human Rights on questions relating to torture, a Joint Declaration was adopted on 26 June 1999 (A/54/177, annex I), in accordance with resolution 53/139, in which the General Assembly had stressed the need for regular exchanges of views between those bodies. In paragraph 8 of the Declaration, the Committee against Torture, the Board of Trustees of the Fund, the Special Rapporteur and the High Commissioner appealed to all Governments, organizations and individuals to contribute generously and, if possible, on a regular basis to the Fund, keeping in mind the increasing demand for medical, psychological, social, humanitarian and legal assistance to victims of torture and members of their families worldwide.

#### 4. United Nations High Commissioner for Human Rights

12. Mrs. Mary Robinson, in a letter dated 1 October 1999, drew the attention of all Governments to the calls for contributions made by the General Assembly and the Commission on Human Rights and in the Joint Declaration. She said that applications for grants for the year 2000 were expected to reach US$ 10 million. She stressed that she would be extremely grateful if those Governments able to do so would make their contribution to the Fund, or significantly increase their contribution, before the session of the Board of Trustees.

B. Meeting with regular donors

13. Every year, the secretariat of the Fund organizes technical briefings for interested regular donors in Geneva; one meeting was organized in February 1999 and another will take place on 9 December 1999.

C. Role of the Board of Trustees of the Fund

14. In its resolution 36/151 of 16 December 1981, in which it established the Fund, the General Assembly authorized Board members to promote and solicit contributions and pledges. The General Assembly had also requested the Secretary-General to give the Board of Trustees all the assistance it might require.

15. The Board of Trustees of the Fund consists of Mr. Jaap Walkate (Chairman), Mr. Ribot Hatano, Ms. Elizabeth Odio-Benito, Mr. Ivan Tosevski and Mr. Amos Wako. The members of the Board of Trustees have the opportunity to solicit contributions at the annual meeting with representatives of the Permanent Missions to the United Nations in Geneva, organized at the end of the Board's session. When travelling on official business, the Chairman of the Board of Trustees, Mr. Walkate, takes every opportunity to meet officials from ministries of foreign affairs and to invite them to contribute to the Fund (see also the relevant parts of his speech to the Eighth International Symposium on Torture in New Delhi, in the annex to this report). In that connection, it is also well worth reading his article "Torture: zero tolerance!",[1] in which he recommends that associations, charitable institutions, churches and schools should help by organizing activities to raise money for the United Nations Fund or sponsor one or more centres and hence give them more direct financial support.

16. The Commission on Human Rights has introduced the practice of inviting a member of the Board of Trustees of the Fund, if that person is in Geneva during the session of the Commission in March/April, to present the financial situation of the Fund to the Commission under the appropriate agenda item, and to encourage participants to pay their contributions before the meeting of the Board in May. Mr. Tosevski did so on 9 April 1999.

17. The General Assembly, in its resolution 53/139, requested the Secretary-General to assist the Board of Trustees of the Fund in its appeal for contributions and in its efforts to make better known the existence of the Fund and the financial means currently available to it, as well as in its assessment of the global need for international funding of rehabilitation services for torture victims and, in this effort, to make use of all existing possibilities, including the preparation, production and dissemination of information materials (para. 19).

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[1] In Reflections on the Universal Declaration of Human Rights: A Fiftieth Anniversary Anthology, Ministry of Foreign Affairs of the Netherlands, Kluwer Law International, Martinus Nijhoff Publishers, The Hague/Boston/London, 1998, pp. 304-310.

## IV. NEEDS ASSESSMENT

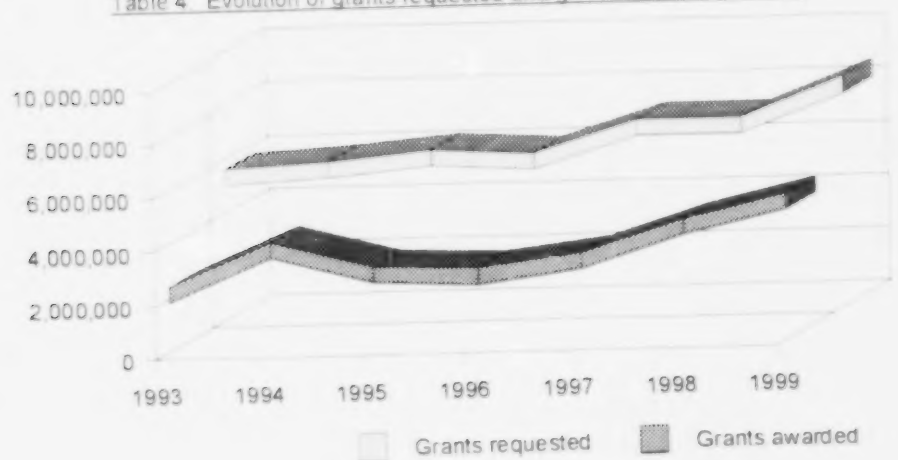
### A. Requests received and grants awarded (1993-1999)

18. In order to take into account the disparity between the requests for grants and the grants awarded from the contributions available (see table 3), for several years the practice of the Board of Trustees has been to award virtually the total amount available and to carry forward only the compulsory reserve to the following year (see A/54/177, para. 15).

Table 3. Comparison of grants requested and grants awarded (1993-1999)

| Year | Requested (US$) | Awarded (US$) | Percentage awarded | Additional amount required (US$) |
|---|---|---|---|---|
| 1999 | 8 251 860 | 5 078 500 | 61.5 | 3 173 360 |
| 1998 | 6 800 000 | 4 210 000 | 61.9 | 2 590 000 |
| 1997 | 6 800 000 | 3 036 054 | 44.6 | 3 763 946 |
| 1996 | 5 618 645 | 2 535 500 | 45.1 | 3 083 145 |
| 1995 | 5 827 645 | 2 719 680 | 46.6 | 3 107 965 |
| 1994 | 5 476 959 | 3 698 080 | 67.5 | 1 778 879 |
| 1993 | 5 289 413 | 2 111 880 | 39.9 | 3 177 533 |

Table 4. Evolution of grants requested and grants awarded (in US$)



B. Estimated needs for 2000

19. The secretariat strives to be realistic in assessing the needs of the Fund for the year 2000, as recommended by the Board of Trustees. If the upward trend observed since 1998 continued (see tables 3 and 4 above), the total amount requested from the Fund in the year 2000 by the organizations concerned would reach almost US$ 10 million. Given that the increase in requests between 1998 (US$ 6.8 million) and 1999 (US$ 8.2 million) amounted to US$ 1.4 million, if the increase in requests was maintained between 1999 and 2000, US$ 1.4 million would have to be added to the requests in 1999, making a total of US$ 9.6 million. An extra 13 per cent would be needed to cover the costs of programme support and 15 per cent on top of that to provide the compulsory reserve. The total amount necessary would thus be over US$ 12 million.

20. However, according to information received by the Board of Trustees of the Fund at its eighteenth session, the large increase between 1998 and 1999 was partly due to problems with the payment of grants by the European Commission (see para. 3 above), which were likely to be overcome soon. Consequently, the total amount requested from the Fund in 2000 by the organizations concerned should be approximately the same as or slightly less than the amount requested in 1999, that is, about US$ 8 million. An extra 13 per cent for programme support and 15 per cent for the compulsory reserve should be added to this amount. A little over US$ 10 million would therefore be a reasonable estimate for the total amount of contributions that would need to be received before May 2000 if all requests were to be met.

21. The Commission on Human Rights (resolution 1999/32, para. 36) called for an updated assessment of the global need for international funding of rehabilitation services for victims of torture. In accordance with a guideline laid down by the Board of Trustees, the Fund as a rule only finances up to a third (33.33 per cent) of any programme of assistance submitted to it and only finances those activities of an organization that are intended to provide the victims of torture with direct medical, psychological, psychiatric, economic, social, humanitarian or legal assistance; it does not provide financial aid for other victims or other activities of the help organizations. Part of the answer to the Commission's request is therefore that, in order to finance the other two thirds of their programmes, the organizations that have submitted a request to the Fund need to find about US$ 16 million from other donors.

22. With regard to the third to be financed by the Fund, at the time of writing (29 November 1999) the total amount of new contributions paid (since 17 May 1999) was only US$ 851,628 (see table 1 above).

23. If the Governments that have pledged US$ 825,262 (see table 2 above) pay their contributions before May 2000, as they have been called upon to do by the General Assembly, the Commission on Human Rights and the High Commissioner, a further US$ 8.3 million would still need to be raised before the end of April 2000.

24. The regular donors to the Fund who have not yet paid or pledged a voluntary contribution for 2000 are listed in the following table. They have been invited by the High Commissioner, by letter of 1 October 1999, to increase their contribution if possible.

Table 5. Regular donors to the Fund who have not yet made or pledged a voluntary contribution for the year 2000

| State | Estimated contribution (US$) | Number of past contributions |
|---|---|---|
| Argentina | 7 000 | 13 |
| Australia | 60 000 | 6 |
| Austria | 20 000 | 16 |
| Belgium | 82 000 | 5 |
| Canada | 15 000 | 16 |
| Cyprus | 945 | 10 |
| Denmark | 280 000 | 17 |
| Finland | 181 000 | 17 |
| France | 81 000 | 21 |
| Germany | 112 000 | 16 |
| New Zealand | 15 550 | 12 |
| Norway | 133 000 | 14 |
| Republic of Korea | 15 000 | 3 |
| Sweden | 300 000 | 12 |
| United Kingdom | 200 000 | 11 |
| United States | 3 000 000 | 16 |
| TOTAL | 4 502 495 | |

25. An amount of about US$ 3.8 million would still need to be found from new contributors to the Fund and/or regular donors prepared to increase their contribution.

26. For this reason, the General Assembly, the Commission on Human Rights, the High Commissioner, the Board of Trustees of the Fund, the Committee against Torture and the Special Rapporteur on questions relating to torture, in their Joint Declaration of 26 June 1999 (A/54/177, annex I, para. 8), called on "all" Governments, as well as organizations and individuals, to contribute to the Fund.

## V. OTHER INFORMATION

### A. Consultations with the Committee against Torture and the Special Rapporteur

27. The reports of the Committee against Torture and the Special Rapporteur have been made available to Board members at their session every year since these bodies were established. Moreover, whenever possible, the Board's sessions are scheduled to coincide with a session of the Committee or the presence of the Special Rapporteur in Geneva (see also resolution 53/139 of the General Assembly, mentioned in paragraph 11 above). In 1999, owing to constraints on the availability of members, the session of the Board of Trustees did not coincide with that of the

Committee against Torture or with the presence in Geneva of the Special Rapporteur. However, the officials from the Office of the High Commissioner who assist them were invited to the first meeting of the eighteenth session of the Board to report to its members on the work of the Committee and the Special Rapporteur, reply to their questions and pass on the Board's relevant recommendations to the Committee and the Special Rapporteur. Such regular consultations are useful to the Board when it has to determine, for example, the kinds of "torture", "victims" of torture and any "public official or other person acting in an official capacity" that the Fund's secretariat should bear in mind when considering requests for funding and the narrative reports on the use of grants. These consultations are also useful when the Board is required to interpret the Fund's terms of reference in the light of the provisions in article 1 of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

29. Thus, the Board took into account at its eighteenth session the Committee's deliberations on communication No. 120/1998 (A/54/44, annex VII, A, 11, para. 6.5) concerning public officials or any other persons acting in an official capacity who might act, in certain countries without a central Government, on behalf of quasi-governmental institutions or factions exercising certain prerogatives that are comparable to those normally exercised by legitimate Governments.

30. The Board informed the Special Rapporteur of its support for the two meetings of professionals and experts in the field of assistance for victims of torture - the first in Istanbul and the second at the Office of the High Commissioner in Geneva - which had contributed to the drafting of principles and the "Manual on the effective documentation of torture", known as the Istanbul Protocol, as the first version of it had been prepared at the meeting organized by the Human Rights Foundation of Turkey, held from 11 to 13 March 1999 in Istanbul. The Fund supported the preparation of this manual for the following reasons:

(a) It would make it possible, among other things, to evaluate the care needed by victims of torture;

(b) It would make it easier to process applications for refugee status;

(c) It benefited from contributions by many specialists in medical, psychological and legal aid to victims of torture;

(d) It was inspired by the *Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions* (United Nations Publication, Sales No. E.91.IV.1).

The manual is intended to provide the various professionals involved in helping victims of torture (doctors, surgeons, psychiatrists, psychologists, human rights experts, lawyers, police officers, prosecutors, judges, etc.) with a precise tool to analyse allegations and the after-effects of torture and to allow them to better determine whether a survivor has been tortured (experts in

forensic medicine are able to determine whether a dead person was tortured) The Special Rapporteur presented the principles and the manual to the General Assembly, orally and in his report (A/54/426, paras 53-55 and the annex)

### B Briefing for non-governmental organizations

30 A briefing for interested non-governmental organizations was organized by the secretariat of the Fund on 19 August 1999, during the session of the Sub-Commission on the Promotion and Protection of Human Rights It dealt with the activities of the Fund, project selection criteria, the methods of work of the secretariat and the Board of Trustees, the Fund's guidelines and the schedule for the submission of requests for grants, the payment of grants and the submission of narrative and financial reports on the use of the grants

### C United Nations International Day in Support of Victims of Torture (26 June 1999)

31 In its resolution 52/149 of 12 December 1997, the General Assembly proclaimed 26 June the United Nations International Day in Support of Victims of Torture Information on the activities organized by the secretariat to celebrate this day is contained in document A/54/177 (paras 28 and 29 and annexes I, II and IV) The High Commissioner recorded a special video message which was broadcast simultaneously at United Nations Headquarters in New York and at the United Nations Office at Geneva on 26 June

32 A public exhibition of works by victims of torture was held at the Palais des Nations from 21 June to 1 July 1999 and at the Palais Wilson, where the Office of the High Commissioner for Human Rights is based, from 6 to 16 July 1999 the exhibition comprised more than 100 paintings, posters, drawings, photographs and sculptures sent to the secretariat of the Fund by about 30 organizations which with the Fund's support provided victims and their families in many countries with medical, psychological, social, financial and legal assistance It should be stressed that many of these exhibits were created by victims as part of their therapy; art can offer a way to externalize what they are unable or unwilling to communicate in speech or writing

33 The following organizations contributed to the exhibit Aid for Children in Crisis (South Africa), Amigos de los Sobrevivientes (United States), Association pour les victimes de répression en exil (AVRE, France), Behandlungs Zentrum für Folteropfer (BZFO, Germany), Centre for Rehabilitation of War and Torture Victims (Sweden), Centre for Victims of Torture (Nepal), Centro de Estudios Fronterizos y de Promoción de los Derechos Humanos (CEFPRODHAC, Mexico), Centro de Salud Mental y Derechos Humanos (CINTRAS, Chile), Comisión de Derechos Humanos de El Salvador,Comité de Defensa para los Derechos del Pueblo (CODEPU, Chile), Comite para la Defensa de la Salud, la Etica Profesional y los Derechos Humanos (CODESEDH, Argentina), Commission africaine des promoteurs de la santé et des droits de l'homme (CAPSDH, Burundi), Estonian Center for Medical Rehabilitation for Victims of Torture, Exil (Belgium), Families of Victims of Involuntary Disappearance (FIND, Philippines), Family Rehabilitation Center (Sri Lanka), Fundación Ecuménica para el Desarrollo y la Paz (FEDEPAZ, Peru), Fundación Social Colombiana Ceda Viva (Colombia), Fund for Social Jurisprudence Research (TOHAV, Turkey), International Rehabilitation Council for

Torture Victims (IRCT, Denmark), Justice pour Tazmamart (France), Medical Foundation (Uganda), Medical Foundation for the Care of Victims of Torture (United Kingdom), Programme for Torture Victims (PTV, United States), Réseau d'intervention auprès des personnes ayant subi la violence organisée (RIVO, Canada), Sudanese Victims of Torture Group (SVTG, United Kingdom), Swedish Red Cross, Treatment and Rehabilitation Unit for Survivors of Torture and Trauma (TRUSTT, Australia), Zentrum für sozialmedizinischen, rechtslichen und kulturellen Betreuung von Auslandern (ZEBRA, Austria)

34. The subjects of the art works included torture of women and children, various torture techniques currently in use, the possibility of rehabilitation despite the lasting effects of torture, and the possibility of adapting to the people of the host country with its different language, culture and way of life. The documentation distributed to visitors to the exhibition included article 5 of the Universal Declaration of Human Rights, relating to torture, article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, containing the definition of torture under the Convention, the Secretary-General's press release of 26 June 1999 (HR/4423, 24 June 1999) and the Joint Declaration of 26 June 1999.

35. In its resolution 53/139 (para. 22), the General Assembly calls upon the United Nations High Commissioner for Human Rights, United Nations bodies and intergovernmental and non-governmental organizations to commemorate each year, on 26 June, United Nations International Day in Support of Victims of Torture. Consequently, the letters informing organizations of the secretariat's decisions on grants, following the May 1999 session of the Board of Trustees, mentioned again that the Office of the High Commissioner would be glad to receive new works from the beneficiaries of programmes so that it could mount a new exhibition in June 2000.

### D. Prizes awarded to organizations financed by the Fund

36. Two organizations supported by the Fund have been awarded prizes. Dr. Paz Rojas Baeza, of the Chilean organization Comité de Defensa para los Derechos del Pueblo (CODEPU), received the 1998 Lisl and Leo Eitinger Prize of the University of Oslo; the prize was presented to her at a ceremony during which the Special Rapporteur on questions relating to torture made a speech. The National Swami Pranavananda Peace Award for Argentina was awarded to the Argentine organization Comité para la Defensa de la Salud, la Etica Professional y los Derechos Humanos (CODESEDH), run by Dr. Norberto Liwski; this award recognizes individuals and organizations working for the cause of peace.

### E. Internal information activities

37. In order to publicize the objectives and operations of the Fund within the Office of the High Commissioner for Human Rights, the Fund's secretariat organized two briefings for officials from two units. The briefings were also intended to allow other colleagues from the Office of the High Commissioner to provide information and guidance to the relevant organizations.

F. Eighth International Symposium on Torture (New Delhi, 22-25 September 1999)

38. The Fund's guidelines, as approved by the Secretary-General, allow it to subsidize training and experience-sharing seminars for professionals offering direct assistance to victims of torture.

39. Thus, in 1999 the Fund helped to finance the Eighth International Symposium on Torture, on the theme of "Torture as a challenge to the health, legal and other professions", organized in New Delhi, India, from 22 to 25 September 1999 by the International Rehabilitation Council for Torture Victims (IRCT), the National Human Rights Commission of India (NHRC), the Indian Medical Association and the Indian Law Institute, under the patronage of the High Commissioner for Human Rights. The Chairman of the Board of Trustees of the Fund, Mr. Jaap Walkate, was invited to participate in the work of the Symposium (see annex below). On 3 December 1999, Mrs. Robinson had talks with Dr. Erik Holst, a member of the organizing committee, who told her about the work of the Symposium and presented her with a collection of the papers presented at it and the text of the Delhi Declaration and Programme of Action adopted by the Symposium (see attached annex, as well as the annex to the report of the Secretary-General to the General Assembly in A/48/520, in which the Istanbul Declaration, adopted at an earlier symposium organized by IRCT on 24 October 1992, is reproduced).

## VI. HOW TO MAKE A CONTRIBUTION

40. Governments, individuals and non-governmental organizations wishing to make a contribution to the Fund before May 2000 can do so as follows:

(a) By bank transfer to the United Nations Geneva General Fund:

- In United States dollars, c/o Chase Manhattan Bank, New York,
  A/c. 001-1-508629, UNOG General Fund,
  G/L. UN-0503456,
  United States Banking Code: 021000021

- Or in Swiss francs, c/o UBS AG,
  PO Box 2770, CH-1211 Geneva 2,
  A/c. 240-CO-590-160.0,
  Swift address: UBSWCHZH12A

(b) By cheque, made out to the "United Nations", to:

- The Treasurer, United Nations Office at Geneva,
  Palais des Nations, CH-1211 Geneva 10, Switzerland, or

- The Treasury, United Nations, New York, NY 10017,
  United States of America

41. In all cases, please specify: "Payee: United Nations Voluntary Fund for Victims of Torture, a/c CH".

42. For any further information on the Fund, please contact the secretariat of the Fund, Funds for Voluntary Contributions (Support Services Branch), Office of the United Nations High Commissioner for Human Rights, Palais Wilson, CH-1211 Geneva 10, tel: +41 22 917 9315, fax: +41 22 917 9017, e-mail: dpremont.hchr@unog.ch

Annex

## EIGHTH INTERNATIONAL SYMPOSIUM ON TORTURE, NEW DELHI, 22-25 SEPTEMBER 1999

### A. Extracts from the speech by the Chairman of the Board of Trustees of the Fund

Thanks to the organization of symposia like this VIIIth Symposium in New Delhi, the international community engaged in the combat against torture can bring together special knowledge and vast experience from a large group of experts in the collective effort of finding solutions to complicated social problems which create conditions under which torture is committed or tolerated. We need a multidisciplinary and a multi-cultural approach to the search for ways to abolish an abject practice which is totally opposed to and in violation of the Universal Declaration of Human Rights (1948).

The Board of Trustees of the United Nations Voluntary Fund for Victims of Torture is proud to be a sponsor of the Symposium and to have subsidized part of its costs through and with the help of the International Rehabilitation Council for Torture Victims (IRCT) in Copenhagen which has undertaken so many wonderful initiatives over the past years.

Torture, widespread phenomenon as it is, should not be considered nor accepted as if it were a natural disaster which is caused by powers beyond our control. It is a man-made disaster which can be eliminated in the end, if the political will exists to do so. It is not only a matter of dealing with the consequences of this disaster, but also and especially of trying to prevent it from happening. The violation of human dignity and physical integrity which torture and, in its lesser form, cruel, inhuman and degrading treatment or punishment constitute, is a symptom of a malfunctioning social order. Its consequences in terms of human suffering, rupture of social fabric and duration of rehabilitation - if at all fully feasible - are unacceptable from a moral point of view. All of us, but especially politicians as those responsible for the shaping of civil society, have a duty to maintain moral standards to the best of their ability and, thus, mobilize forces against torture.

Article 5 of that famous Universal Declaration is the basis of the general prohibition of torture under international law. From the Universal Declaration many international instruments have originated, such as declarations and treaties adopted by the General Assembly of the United Nations, which incorporate and elaborate that prohibition. It may be concluded that the unconditional prohibition of torture in all its manifestations and under all circumstances is firmly based in international law and is binding on all States. Therefore, torture is also unacceptable from a legal point of view. Most explicit in this context is the United Nations Convention against Torture (1984) which lays down detailed provisions for States parties to fulfil.

Torture should be declared a punishable act under national law and perpetrators should be prosecuted and, if found guilty, punished. The international rules are clear and firm and where international obligations exist they should be complied with. The same is true for national legislation. A precondition is a set of laws, codes and regulations which outlaw the practice of torture and which should be strictly implemented. These rules should duly take into account the interests of victims of torture and should provide for the right to be heard by a magistrate upon

their complaint of having been tortured, and the right to redress and adequate compensation, including the means for full rehabilitation. Politicians who are legislators or members of government have a special responsibility for maintaining and implementing legal standards which are imposed upon the State.

After many years of involvement in the struggle against the practice of torture I have come to the conclusion that this evil is first and foremost a challenge to the political system of a country. It should be placed on every political agenda, because only by exercising political power can one hope to get the practice under control. Experience shows that law enforcement personnel are not always and not under all circumstances competent to apply the legal rules concerning arrest, detention and imprisonment properly and, therefore, often fail to assist in the administration of justice. What is more distressing is that law enforcement personnel often are used under certain political conditions to commit or participate in acts of torture. If at the political level torture is accepted as an instrument to reach certain political goals or is condoned as some form of unavoidable behaviour of law enforcement personnel, what hope do we have that efforts undertaken at lower levels in the hierarchy to eradicate the evil of torture will be successful? All instruction and training programmes which we devise for civil police, armed forces and prison personnel to instil the necessity of refraining from such practices will most likely be less effective if they are sanctioned, either explicitly or tacitly, by the political leaders of the land. Although, under international law, an order from a superior officer or a public authority may never be invoked as a justification of torture, in reality this rule is being violated on a wide scale. Therefore, a precondition to all the work we are undertaking in our own national contexts, is to ensure that at the political level every effort is made to publicly reject torture as unacceptable. At the same time, there should be no doubt about the political will to prosecute and bring to justice all those who are involved in acts of torture, either by committing them or by condoning them. In too many cases torture is not the criminal act of a single undisciplined policeman, it is too often a "crime of obedience", that is a crime which takes place not in opposition to the authorities but under explicit instructions from the authorities. This makes investigation and prosecution of such crimes virtually impossible. It is the duty and responsibility of the politicians to see to it that no one can "justify" his or her criminal acts by referring to an order from higher up in the hierarchy. In short, the existence of positive political will is crucial to the successful prevention of these crimes.

Let me add to this that in this respect torture should also be seen as a challenge to the judiciary. It is beyond doubt that judges have an important role to play in the elimination of the practice. Evidence obtained under duress or any form of torture should be thrown out immediately by the judge. This act, apart from showing moral strength and the right legal conscience, will invalidate any criminal procedure and therefore put the prosecuting authority in a position where it would have to release the accused. This will certainly help to discourage law enforcement personnel from using torture to obtain the cooperation of or a confession from the accused.

The number of victims of torture all over the world is not known, but can hardly be overestimated. The costs of rehabilitating them are enormous, especially since the long-term effects of torture are pernicious: the physical and mental consequences can endure for years and may be irreversible. The United Nations General Assembly in establishing the Voluntary Fund for Victims of Torture, in 1981, assumed a form of collective responsibility for the rehabilitation

of torture victims. The Fund is administered by the Secretary-General with the assistance of a Board of Trustees comprised of five members with wide experience in the field of human rights. The Fund assists some 100 organizations in over 70 countries with donations from about 35 - predominantly industrialized - Member States. In May 1999, about US$ 5.1 million was available for project grants, enabling the United Nations Fund to reach out to some 60,000 survivors of torture.

Many of the organizations the Fund subsidizes are small and operate in isolation. Many of them have been set up with the help of the International Rehabilitation Council for Torture Victims in Copenhagen and benefit from the existing expertise of that pioneer centre. Many of them are well-established institutions that for years have concentrated on help to refugees and victims of violence. All of them are highly motivated and competent to assist survivors of torture, all of them manage to help as many people as their - often very modest - budget allows them, all of them need the grants from the United Nations Fund badly. The treatment of survivors is a very labour intensive and emotionally demanding job. It is indeed a very tough challenge to all who are involved, not only members of the medical profession, but also the paramedical staff, psychologists, lawyers, volunteers and helpers who are often confronted with the mind-boggling stories of the experience their clients have had. And it is a challenge to the survivors themselves as well, especially when they have to relive their emotions. The effect of torture on an individual may be compared to the effect of a stone which is thrown into the water: various expanding rings originate from the centre. Not only has torture also negative effects on members of the family of the victim, often on his friends and neighbours and sometimes even on children born after the fact, it also may affect the rehabilitators, who have to make special efforts to cope in order to help. We know that the rehabilitation staff of certain centres have set up a back-up group of professionals who counsel their colleagues on how to handle their own emotions. It is especially these long-term and side effects that give me extra reason for concern. It is a sorry state of affairs to see how one act of torture committed against one person not only severely injures that person, but also, and often belatedly, touches a circle of individuals around that person, who in their turn need appropriate counselling.

A lot of money is still required to ensure a steady flow of funds to the various rehabilitation centres around the world. Contributions to the United Nations Fund can be made by anyone, private persons or organizations, as well as States. Member States that so far have only espoused the cause of the abolishment of torture and the rehabilitation of its victims through lip-service, should be persuaded to advance the good cause by undertaking realistic efforts to abolish and prevent torture practices and by making generous contributions to the United Nations Voluntary Fund for Victims of Torture in Geneva.

B. Delhi Declaration and Programme of Action on Freedom from Torture

The Vienna Declaration and Programme of Action adopted by the United Nations World Conference on Human Rights in June 1993 constituted a landmark at the international level in the consideration of freedom from torture. Since then a number of developments have taken place, including the following.

1. A steadily increasing number of States have ratified the United Nations Convention against Torture. Several more have signed the Convention and initiated the process of

ratification. However, the number of States having ratified the Convention against Torture without reservations is still regrettably small. Therefore, in many cases, the individual protection provided for under the Convention is denied.

2. An increasing number of national human rights institutions have been established, many of which have given priority to the problem of torture.

3. Despite the continuance of impunity laws in certain countries, the number of alleged perpetrators formally indicted and actually brought to trial is on the increase, nationally and internationally.

4. Recognition of the need to provide comprehensive reparation to victims of torture is gaining ground, nationally and internationally.

5. Access to professional health care and legal assistance is available to an increasing number of survivors of torture worldwide.

6. Relevant training and material concerning torture is available to a growing number of health professionals and law enforcement personnel, civil and military. However, few countries - even States parties to the Convention against Torture - have systematically implemented such training for all relevant professions as provided for in the Convention. Neither has relevant training material been made available in all the required languages at the country level.

7. An initiative has been taken by a number of concerned NGOs and health professionals to update and expand existing manuals for forensic medical examination of suspected victims of torture. The resulting Istanbul Protocol outlines principles for investigation and diagnostic tests. It also proposes minimum international standards, which, it is expected, will be considered shortly by the United Nations.

8. Multilateral and bilateral funds for assistance to victims of torture have increased but are still far from sufficient to allow continued operation and the necessary expansion of appropriate services for survivors of torture and their families.

9. An increasing number of States have joined the European Convention for the Prevention of Torture, thereby accepting unhindered access to any place of detention, including psychiatric services, under their jurisdiction. However, the efforts within the Commission on Human Rights to create a similar system at the global level have not so far met with consensus agreement.

10. In 1997 the General Assembly instituted 26 June as the United Nations International Day in Support of Victims of Torture. This Day is now being observed all over the world.

However, the Symposium also noted with concern:

1. Although torture, as State policy, has ended in certain countries that have witnessed changes in regime, it continues to be widely prevalent in many countries where it is still either accepted, or at least tolerated, as part of law enforcement interrogation and punishment.

2 War and situations of armed conflict within and between States have, in recent years, given rise to the gravest human rights violations, including torture.

3 Health professionals in many countries still find themselves under duress to condone or cover up torture, in violation of their codes of ethics and the United Nations Principles of Medical Ethics.

Given the continued widespread practice of torture on the threshold of the new millennium, the Symposium urges the following action at the national level:

1 Sensitization of the political leadership to issues concerning torture;

2 Accession to the United Nations Convention against Torture where this has not taken place;

3 Accession to the Statute of Rome on the establishment of the International Criminal Court;

4 Expeditious revision of national laws to address comprehensively the prosecution of torturers and reparation to victims of torture;

5 A significant increase in the number and size of State contributions to the United Nations Voluntary Fund for Victims of Torture, as well as identification and systematic canvassing of potential supplementary donors to the Fund;

6 The systematic and effective monitoring by national human rights institutions of instances of torture, particularly custodial violence;

7 The undertaking of every effort to promote a culture of non-violence and respect for human rights;

8 The repeal of laws providing impunity to torturers;

9 Special consideration of practical ways to protect women and children against torture;

10 Greater involvement of all components of civil society, including the health, legal and other professions, non-governmental organizations and the media, in the fight against torture.

The Symposium further urges the United Nations to take the following action:

11 To expedite consideration of an optional protocol to the Convention against Torture allowing international access to all places of detention under the jurisdiction of States parties to the protocol;

12 To expedite consideration of the proposed United Nations principles on the right to restitution, compensation and rehabilitation for victims of grave violations of human rights and fundamental freedoms;

13. To expedite consideration of minimum international standards for forensic examination of alleged victims of torture and the effective global dissemination of the guidelines contained in the Istanbul Protocol;

14. To ensure diligent prosecution of alleged torturers and effective protection and redress to victims of torture and their families within the framework of the procedures being developed for the International Criminal Court;

15. To provide technical assistance for the production and effective global dissemination of relevant teaching material on torture issues for health, legal, law enforcement and other concerned personnel;

16. To provide technical assistance for recurrent international and national information campaigns with a view to creating and maintaining public awareness of the continued practice of torture and of the need to provide effective reparation to torture survivors and their families;

17. To strengthen the capacity and resource base of the United Nations mechanisms supporting the fight against torture.

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